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1 IKIMULISA LIVINGSTON  
2 standards" on what's marked as Bates stamped  
3 IL-6; is that right?

4 A That's correct.

5 Q Do you know what your supervisors  
6 gave you as a rating for that period?

7 A I don't have that in front of me,  
8 so I don't know it right now.

9 Q Your supervisors gave you a rating  
10 of a 2, which is "needs improvement" for  
11 that same period.

12 Do you remember that?

13 A Could you please show it to me.

14 MS. LOVINGER: I'll show you  
15 what's been marked as Livingston  
16 Exhibit 10, and this is your APA for  
17 fiscal year 2009. Bates stamp  
18 NYPFL-000332 through 000334.

19 (Livingston Exhibit 10, APA  
20 for fiscal year 2009, Bates Numbers  
21 NYPFL-000332 through NYPFL-000334,  
22 was marked for Identification.)

23 BY MS. LOVINGER:

24 Q Does this refresh your recollection  
25 as to what your rating was for fiscal year

1 IKIMULISA LIVINGSTON  
2 2009?

3 A You mean what the editors rated me?

4 Q Yes, how your supervisors rated  
5 you.

6 A Yes.

7 Q Prior to receiving this APA, had  
8 any of your supervisors discussed with you  
9 your performance?

10 MR. THOMPSON: Objection.

11 A I don't know what period of time  
12 you are referring to.

13 Q The period of time referenced in  
14 this APA, fiscal year 2009.

15 A So this would be after I was  
16 demoted?

17 Q If you are referring to your  
18 removal of the Queens Courthouse position,  
19 yes, it was after you were removed from the  
20 Queens Courthouse.

21 A After I had returned to general  
22 assignment reporting, no, no one had spoken  
23 to me and said that there was any problem.

24 Q Until you received this APA?

25 A That's correct.

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1 IKIMULISA LIVINGSTON  
2 Q And what date did you receive the  
3 APA?

4 A I don't recall the exact date I  
5 received it.

6 Q I'll direct your attention to what  
7 you have before you, Livingston Exhibit 10.  
8 The page Bates stamped NYPFL-000334.

9 Do you see the date August 13,  
10 2009?

11 A I see the date.

12 Q Was that the date that you received  
13 your performance evaluation?

14 A Offhand, I don't know if that's the  
15 date.

16 Q But it's your testimony that after  
17 you returned to general assignment reporting  
18 from the Queens Courthouse, no one spoke to  
19 you and said there was any problem with your  
20 job performance; is that correct?

21 A Yeah, I don't recall anyone  
22 specifically saying that there was any  
23 problem with what I was doing as a general  
24 assignment reporter.

25 MS. LOVINGER: I'm going to

1 IKIMULISA LIVINGSTON  
2 show you what's marked as Livingston  
3 Exhibit 11, and this is a memo Bates  
4 stamped IL-300. It's dated August 6,  
5 2009. It's a memo to you from  
6 Michelle Gotthelf copying Jesse  
7 Angelo and Amy Scialdone.  
8 (Livingston Exhibit 11,  
9 Memorandum dated August 6, 2009,  
10 Bates Number IL-300, was marked for  
11 Identification.)

12 BY MS. LOVINGER:

13 Q Do you recognize this document now?

14 A Yes, I do.

15 Q Is that your signature on there?

16 A Yes, it is.

17 Q In this memo, Michelle Gotthelf  
18 states "Please consider this a letter of  
19 warning concerning your underperformance as  
20 a reporter. As discussed, we have reviewed  
21 with you what's required from your job, but  
22 your work needs improvement to meet the  
23 standards necessary to succeed in the  
24 editorial department. Your editors have  
25 discussed with you the following issues that

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IKIMULISA LIVINGSTON  
need to be focused on and improved upon:  
Does not pitch stories, investigative ideas  
or weekend pieces suitable for the paper,  
which is a job requirement.

"It's important that we see  
immediate and consistently sustained  
improvement in your performance. We want to  
see you succeed and we believe you have the  
ability to do so but we cannot do it for  
you. Failure to achieve and maintain the  
required company standards will result in  
further disciplinary action. We certainly  
hope it doesn't come to that."

Do you remember receiving this  
warning?

A Yes, I remember receiving it.

Q Did you understand that you needed  
to improve your job performance?

A At what time?

Q After you received this warning.

A After I received this? Yeah. I  
have to say that this was like -- I was  
dumbstruck by this.

And I pitched story ideas for them

IKIMULISA LIVINGSTON

that they rejected.

This evaluation I believe is  
discriminatory and I also believe the letter  
of warning is also discriminatory and  
retaliatory.

Q Why were you dumbstruck by this  
warning?

A Because during the time that I was  
back at GA, after I was promised a desk and  
didn't receive one and promised a telephone  
and didn't receive one and told I would be  
in the office sometimes, and my white  
colleagues did get these resources and  
access to one another to bounce story ideas  
off and access to the archives and librarian  
and the wire services that would help  
generate story ideas by having those  
resources available.

I didn't have any of these  
resources. I didn't even have a beat  
anymore. All of my sources had essentially  
disappeared because I was no longer at the  
Queens Courthouse.

So for them to throw this at me and

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IKIMULISA LIVINGSTON  
essentially tell me that any minute I could  
be fired because these stories -- that I  
didn't pitch enough story ideas that they  
would actually run, I was dumbstruck. I  
cannot believe that I was seeing this.

And it frightened me.

Q You said you believed the letter of  
warning is discriminatory and retaliatory.

How is it -- what did you believe  
this warning is in retaliation for?

A For complaining about the racist  
cartoon that the New York Post published  
calling black people monkeys.

Q Are you referring to the complaint  
you described this morning with Ms. Gotthelf  
where she agreed with you?

A I'm referring to my complaint to  
Michelle that the cartoon was racist and  
insensitive and offensive to black people  
and to myself included.

Q And just based on your complaint to  
Michelle Gotthelf, that's the action you  
took that you believe you were being  
retaliated for having taken?

IKIMULISA LIVINGSTON

A Yes. And as a matter of fact,  
since I was promised this desk and a couple  
months later I complained about this  
cartoon, I definitely didn't get a desk. I  
still haven't gotten a desk or telephone in  
the office or the resources that my white  
colleagues have.

Q Ms. Livingston, you were removed  
from the Queens Courthouse in late  
November 2008, correct?

MR. THOMPSON: Objection.

A I was demoted from my position at  
the Queens County Courthouse in December of  
2008 and replaced by a white man who was  
demoted from his position, Billy Gorta, and  
placed in my beat.

Q And you returned to a general  
assignment reporter in December 2008; is  
that right?

A That's correct.

Q And did you have a desk when you  
returned to be general assignment reporter  
in December 2008?

A No.

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1 IKIMULISA LIVINGSTON  
 2 Q Did you have a desk in January  
 3 2009?  
 4 A No, I did not.  
 5 Q Did you have a desk in the early  
 6 part of February 2009?  
 7 A No, I didn't.  
 8 Q But the reason why you didn't have  
 9 a desk was because you complained to  
 10 Michelle Gotthelf, who agreed with you, in  
 11 mid February 2009; that's your testimony?  
 12 A I'm saying, my testimony, I'm  
 13 telling you that I was told I would have a  
 14 desk in December of 2008.  
 15 When Michelle demoted me, she said  
 16 I would get a desk and I would get a phone  
 17 thereby getting all the resources that my  
 18 white counterparts would have. I would be  
 19 in the office sometimes, I would not always  
 20 be out in the street or in the field.  
 21 So that didn't happen in December  
 22 and didn't happen in January.  
 23 I still thought at some point there  
 24 would be a desk forthcoming, but after I  
 25 complained about the cartoon being racist,

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1 IKIMULISA LIVINGSTON  
 2 But Ed Robinson, I referred to him  
 3 as having had a desk because he no longer  
 4 works for the Post.  
 5 Q So when you say "they're working at  
 6 a desk," does that mean that they have a  
 7 desk exclusively assigned to them? Is that  
 8 your understanding?  
 9 A I don't know if it was exclusively  
 10 assigned to them.  
 11 I just know that there were periods  
 12 when I know that they were in the office  
 13 working at a desk and I was denied a desk.  
 14 And in fact, I was essentially banned from  
 15 the newsroom because I was not allowed in  
 16 the newsroom. And the one period of time  
 17 when I did come into the newsroom,  
 18 Greenfield saw me and asked me a hostile  
 19 way, "What are you doing here?"  
 20 Q Okay. Let's talk about the  
 21 banned --  
 22 But one question: isn't it the fact  
 23 that many white general assignment reporters  
 24 do not have desks or phones?  
 25 A I don't know. I know that some do

1 IKIMULISA LIVINGSTON  
 2 none of that was forthcoming. I continue to  
 3 be denied that. And I also received this  
 4 letter of warning, this written warning as  
 5 well as the evaluation that I believe is  
 6 also discriminatory against me.  
 7 Q Did Michelle Gotthelf tell you when  
 8 you would get a desk in the newsroom?  
 9 A No, she didn't.  
 10 Q Tell me who are your white  
 11 counterparts who have desks.  
 12 I want to hear the names of  
 13 everyone who is a general assignment  
 14 reporter who has a desk at 1211.  
 15 A I know that at times Lorena has  
 16 been at the office working at a desk and  
 17 having access to a telephone. Amber  
 18 Sutherland had a desk. Rich Calder had a  
 19 desk. Ed Robinson had a desk.  
 20 Q When you say "had a desk," what  
 21 time period are you talking about, because  
 22 you once had a desk; isn't that right?  
 23 A Well, yes. Once I did have a desk  
 24 and that was taken away and given to a white  
 25 woman.

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1 IKIMULISA LIVINGSTON  
 2 have desks and phones.  
 3 And as a senior reporter who's been  
 4 at the Post for nearly 15 years, who was  
 5 promised a desk, who was told at the time of  
 6 my demotion in December 2008 by Michelle  
 7 Gotthelf, the Metropolitan editor of the New  
 8 York Post, that I would have a desk and I  
 9 would have telephone and I would sometimes  
 10 be in the office writing stories and not  
 11 always in the street, in the field, I took  
 12 that to mean that I would receive a desk and  
 13 that I would receive a telephone and that  
 14 sometimes I would be in the office.  
 15 Q Did Ms. Gotthelf ever tell you that  
 16 you would have a desk that no one else could  
 17 sit in but you?  
 18 A She told me I would have a desk and  
 19 she told me I would have a telephone.  
 20 Q Tell me when you came to the office  
 21 and were denied a seat.  
 22 Let's review the dates that  
 23 happened.  
 24 MR. THOMPSON: Objection.  
 25 A I can't give you an exact date of

49 (Pages 190 to 193)

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1 IKIMULISA LIVINGSTON  
2 when I went into the office, and I can't  
3 say -- well, I can say that I do not have a  
4 desk in the office and I do not have a  
5 telephone.

6 Q You do not have a desk that's  
7 exclusively assigned to you, but has there  
8 ever been a time when you showed up at the  
9 newsroom and you were denied a place to sit?

10 A I'm essentially not allowed in the  
11 newsroom. And the very infrequent times  
12 when I have been permitted to go into the  
13 newsroom after having called in advance to  
14 say that I'm done with my notes, can I come  
15 into the newsroom and write the story, I was  
16 provided with a space, a desk and a computer  
17 to write the story that I was working on.

18 Q So you are allowed in the newsroom;  
19 isn't that right?

20 A I had to call and basically be  
21 permitted into the newsroom.

22 Q When you say you are essentially  
23 not allowed in the newsroom, has any editor  
24 ever told you that you were not allowed to  
25 come into the newsroom?

1 IKIMULISA LIVINGSTON

2 A Michelle did not tell me I was not  
3 allowed to come into the newsroom; Dan  
4 didn't tell me I wasn't allowed to come into  
5 the newsroom. However, when I show up in  
6 the newsroom and Dan looks at me and says in  
7 a hostile way, "What are you doing here,"  
8 that's both humiliating and demoralizing and  
9 degrading. And as someone who worked at the  
10 Post longer than Michelle and longer than  
11 Dan Greenfield, it's incredulous.

12 Q So the answer to my pending  
13 question is no?

14 The question is: When you say you  
15 were essentially not allowed in the  
16 newsroom, has any editor ever told you that  
17 you were not allowed to come into the  
18 newsroom?

19 MR. THOMPSON: Objection. What  
20 question are you asking? You just  
21 asked her two questions. Which one  
22 do you want her to answer?

23 MS. LOVINGER: There's one  
24 question.

25 MR. THOMPSON: No. There's two

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1 IKIMULISA LIVINGSTON  
2 questions you just asked her.

3 Q The question is: Has any editor,  
4 Ms. Livingston, ever told you that you were  
5 not allowed to come into the newsroom?

6 A I stated that Michelle and Dan,  
7 neither of them actually came out and told  
8 me, "No, do not come into the newsroom."

9 Q Has any other editor ever told you  
10 that you were not allowed to come into the  
11 newsroom?

12 A I have not been directly told by  
13 an editor not to come into the newsroom.

14 Q Are you aware of any New York Post  
15 policy with respect to who gets a desk and a  
16 telephone?

17 A No.

18 Q Michelle Gotthelf told you that she  
19 tried to get you a desk but she had to look  
20 into it; isn't that right?

21 A No.

22 Q Do you think you are entitled to a  
23 desk because you've been working at the New  
24 York Post for almost 15 years?

25 A It's not about entitlement.

1 IKIMULISA LIVINGSTON

2 Michelle told me that I would have  
3 a desk.

4 Q But you referenced a few minutes  
5 ago that you've been working at the Post for  
6 almost 15 years, so I'm asking if you think  
7 you are entitled to have a desk exclusively  
8 for your use and no one else's use because  
9 you've been working at the Post for almost  
10 15 years.

11 A I did not say that.

12 Q So is the answer no?

13 A I said that Michelle told me I  
14 would have a desk and a phone and that I  
15 would sometimes be in the newsroom, not  
16 always out in the street or in the field  
17 reporting. I would have opportunities to  
18 write.

19 She told me this. I had no other  
20 reason but -- no other -- why wouldn't I  
21 believe her when she told me that.

22 Q Is it your testimony that you don't  
23 have other opportunities to write as a  
24 general assignment reporter?

25 A If the Post editors didn't on a

50 (Pages 194 to 197)



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1 IKIMULISA LIVINGSTON  
2 very frequent -- if the Post editors didn't  
3 frequently turn down or simply ignore a  
4 story idea that I pitched, then I suppose  
5 there would be an opportunity to write news  
6 stories from my home.

7 Q Explain to me how having a desk  
8 that's exclusively for your use would give  
9 you more opportunities to write as a general  
10 assignment reporter.

11 A Having a desk -- and I'm not saying  
12 exclusively for me, but having a desk,  
13 having the desk that I was promised, would  
14 enable me to be in the office sometimes and  
15 to have access to the library, to the  
16 archives, the library personnel, to my  
17 colleagues, to the wire services, to the  
18 atmosphere of generating news and writing  
19 news stories.

20 Those things would help in my  
21 ability to pitch stories. I would be able  
22 to pitch more story ideas.

23 Q Did you ever try to come in on the  
24 weekend?

25 A Would I try to come in on the

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1 IKIMULISA LIVINGSTON  
2 weekend on my own time.

3 Q On your own time.

4 A And what would I be doing on the  
5 weekends?

6 Q I'm asking you if you ever -- do  
7 you ever come in to the newsroom on the  
8 weekends?

9 MR. THOMPSON: Objection.

10 A Would this be my donating time to  
11 the New York Post?

12 Q I'm asking the questions. It's yes  
13 or no.

14 Do you ever come into the newsroom  
15 on the weekends?

16 A I have occasionally come through  
17 the newsroom on the weekends.

18 Q Do you ever come into the newsroom  
19 in the evening hours?

20 A I have on occasion come into the  
21 newsroom during evening hours.

22 Q When you work outside of your  
23 normal 40 hours, do you put in for overtime?

24 A Yes, I do.

25 Q So when you say that you would be

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1 IKIMULISA LIVINGSTON  
2 "donating time to the New York Post," what  
3 do you mean by that?

4 You don't get paid if you were  
5 working extra hours?

6 A You didn't ask me if I would be  
7 working on weekends and on the evenings.

8 Q Isn't it true that the New York  
9 Post librarian will get you any story you  
10 ask for as an employee of the New York Post?

11 A I've called the librarian and I've  
12 had them send me information on my  
13 cellphone.

14 Sometimes I can open a pdf file on  
15 my cellphone, sometimes I cannot.

16 Q You testified earlier you have a  
17 laptop computer.

18 Why do you need to open up files  
19 exclusively on your cellphone?

20 A My laptop computer is my laptop  
21 computer. I don't necessarily take it with  
22 me all the time.

23 Q Isn't it true that you can come in  
24 and use the New York Post library whenever  
25 you want?

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1 IKIMULISA LIVINGSTON

2 A I can use the library on my own  
3 time? Is that what you are asking me, if I  
4 can use the library on my own time?

5 Q Can you come in and use the New  
6 York Post library when you need resources  
7 that the library can provide?

8 A So this would be me coming in to  
9 the office on my own time to access -- to  
10 just sit at a desk and ask someone for a  
11 logon for the computer and then access the  
12 archives, all on unpaid time?

13 Q I'm not sure what you mean by  
14 "unpaid time." Most people have a job, they  
15 want to get it done and they get it done.

16 I don't know what you mean your own  
17 time versus -- I'm not sure what other time  
18 you are referring.

19 But the question is: Isn't it true  
20 that you are free to come use the library at  
21 the New York Post whenever you want?

22 A When I'm on the clock for the New  
23 York Post, no, I'm not free to come in to  
24 the newsroom and go to the library and not  
25 access the library.

51 (Pages 198 to 201)

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IKIMULISA LIVINGSTON

Q Well, if you are on not on assignment, would you agree you are free to use the library.

A After going to the newsroom and having Dan Greenfield ask me in a hostile way, "What are you doing here," I don't exactly feel welcome going into the newsroom when I'm on downtime.

So, no, I don't feel comfortable. I'm essentially not welcome in the newsroom. And Greenfield made that more apparent when he asked me, "What are you doing here?"

Q Are you aware of the fact that Mr. Greenfield has asked other white general assignment reporters what you're doing in the newsroom when they show up when they are supposed to be on assignment?

A I'm not aware of that.

Q So you just assume that Mr. Greenfield told you you're not supposed to be in the newsroom because you are African-American?

A In light of everything that is going on. In light of the fact that

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IKIMULISA LIVINGSTON

Greenfield told me in a hostile way, "What are you doing here?" In light of the fact that Greenfield similarly rejects my story ideas. In light of the numerous e-mails that Greenfield has sent me bullying me and berating me for taking vacation days that he approved, yeah, I think Dan Greenfield is racist and has been discriminating against me.

Q Are you referring to the consecutive weeks where you sought to take Fridays off as vacation?

A I'm referring to the Fridays that I submitted for vacation days which Dan Greenfield approved and then toward the end of the summer sent me a nasty e-mail berating me for supposedly taking days off that weren't approved by my supervisor; yet he is my supervisor and he approved all of those days.

Q I need to understand the factual basis for your belief that Dan Greenfield did that because you are African-American.

A Dan Greenfield has sent me nasty

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IKIMULISA LIVINGSTON

e-mails, mean-spirited e-mails. He speaks to me in a derogatory, demeaning, dismissive way, as if I don't matter, as if I am a dog.

And when I did come into the office on one occasion and he saw me there and he asked me in a hostile way, "What are you doing here," in light of the fact that he also turns down most, if not all, of my story ideas and on frequent occasions refers to stories about black people and about Latino people as being "low rent," I have come to the conclusion that is discriminating against me.

And in fact, in light of the fact that he's also screamed at and yelled at and made derogatory remarks to Leonard Greene and to Austin Fenner, that leads me also to conclude that he is racist and has discriminated against myself and created a hostile work environment for myself as well as Austin and Leonard.

Q How do you know that Dan Greenfield doesn't speak to white reporters in a similar manner?

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IKIMULISA LIVINGSTON

A I have spoken to other white reporters and none of them that I've spoken to have mentioned that they have been screamed at and demeaned and been dismissed in the manner in which I have and the manner in which Leonard has.

Not to mention the fact that Austin was fired, so ...

MR. THOMPSON: Are you finished, Ms. Livingston?

THE WITNESS: Yeah. If we can take a break for a moment?

MS. LOVINGER: Of course.

THE VIDEOGRAPHER: The time is now 3:37 p.m. We're now off the record.

(A brief recess was taken.)

THE VIDEOGRAPHER: This is the start of Tape Number 4. The time is now 3:59 p.m. We're now back on the record.

BY MS. LOVINGER:

Q Ms. Livingston, you testified

52 (Pages 202 to 205)

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1 IKIMULISA LIVINGSTON

2 before the break that when you came into the  
3 newsroom on one occasion Dan Greenfield  
4 asked you what you were doing there.

5 Can you tell me when that took  
6 place?

7 A I don't know the date that that  
8 took place.

9 Q Do you know what year?

10 A I don't recall which year exactly.  
11 It wasn't this last year.

12 Q Was it in 2010?

13 A I believe it was before I filed the  
14 lawsuit.

15 Q Tell me what Dan Greenfield said to  
16 you.

17 MR. THOMPSON: Objection.

18 A I think I said a number of times  
19 what he said to me.

20 Q Well, you testified earlier that  
21 Ms. Gotthelf confronted you and asked you  
22 what you were doing in the newsroom.

23 Do you remember what time of day  
24 this conversation took place?

25 A It would have been in the

1 IKIMULISA LIVINGSTON

2 afternoon, I believe.

3 Q Do you remember if you had just  
4 finished an assignment?

5 A I had had an assignment somewhere  
6 in the area.

7 Q Do you know if it was the early  
8 afternoon?

9 A I don't know if it was early  
10 afternoon or late afternoon.

11 Q Could it have been late in the day?

12 A I don't know.

13 Q Do you recall why you were coming  
14 in to the newsroom on that particular day?

15 A I think I was just stopping in to  
16 pick up my mail, since if I do have any mail  
17 no one actually sends it to me, and pick up  
18 notepads and supplies. And those things  
19 aren't sent to me either.

20 Q Had you finished your assignment  
21 when you came into the newsroom?

22 A I think I stated that I had had an  
23 assignment in the area, so yes, if I was in  
24 the newsroom, it would have been after I had  
25 finished whatever reporting I needed to do.

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1 IKIMULISA LIVINGSTON

2 Q I know you had testified you had  
3 an assignment somewhere in the area, but it  
4 wasn't clear if it was before -- if you had  
5 come before it was complete.

6 A It would have been afterwards, yes.

7 Q Did you tell Dan Greenfield that  
8 you had already finished your assignment?

9 A I told him I was just picking up  
10 supplies.

11 Q And then what did he say?

12 A I don't remember -- I don't  
13 remember if he said anything at all.

14 Q So basically he asked what you were  
15 doing in the newsroom and you said you were  
16 picking up supplies. That was the extent of  
17 the conversation?

18 A From what I remember, yes.

19 Q Was that the only time Dan  
20 Greenfield confronted you when you were in  
21 the newsroom, when you came into the  
22 newsroom?

23 A That was the only time I recall  
24 where he -- yes, where he asked me in a  
25 hostile way, "What are you doing here?"

1 IKIMULISA LIVINGSTON

2 Yeah, that was the only time.

3 But, mind you, I haven't been in  
4 the newsroom that often.

5 Q When you say you haven't been in  
6 the newsroom that often, do you mean since  
7 you returned to being a general assignment  
8 reporter?

9 A That means since I had been demoted  
10 from my Queens Courthouse beat, yes.

11 Q And is that the same time when you  
12 became a general assignment reporter?

13 A That was when I was reassigned to  
14 being a GA.

15 Q And that was back in December 2008?

16 MR. THOMPSON: Objection.

17 A Yes.

18 Q So it's your testimony that you  
19 haven't come into the newsroom very often  
20 since December 2008; is that right?

21 A That's correct. In my -- working,  
22 yes.

23 Q What was your job title in the  
24 calendar year 2009?

25 A 2009? General assignment reporter.

53 (Pages 206 to 209)

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1 IKIMULISA LIVINGSTON

2 Q And how about in 2010?

3 A GA.

4 Q Is that how -- by the way, is that  
5 the lingo, is it called GA?

6 A "GA" is short for general  
7 assignment.

8 Q Is that the same thing as a runner  
9 reporter?

10 A I don't know where this term  
11 "runner reporter" came from, but I'm a  
12 general assignment reporter. I go out and I  
13 report on things going on in the street, in  
14 the field, and if there is occasion for me  
15 to write up my story or write my notes or to  
16 send my notes, that's what I do.

17 Q Well, I've heard the term used  
18 "runner reporter."

19 Do you know what that is?

20 A I know in the evaluations I  
21 received, in at least one of them they have  
22 referred to me as a "runner," but I know  
23 that I wrote in my rebuttal to that that I'm  
24 a reporter. I'm a general assignment  
25 reporter. I'm not runner.

1 IKIMULISA LIVINGSTON

2 Q Okay. So you were a general  
3 assignment reporter in 2009 and 2010. Were  
4 you also a GA in 2011?

5 A That's correct. I'm doing the same  
6 thing.

7 Q And when you say that since 2008  
8 you haven't been in the newsroom that often,  
9 how many times a month on average would you  
10 say you come into the newsroom?

11 A A month?

12 Q Yes. Like on average, any given  
13 month.

14 A While I'm working? There certainly  
15 have been months when I don't come into the  
16 newsroom at all.

17 Q And then what's the most times  
18 you'd say you've come into the newsroom  
19 since your return to the general assignment  
20 reporter position?

21 MR. THOMPSON: Objection.

22 A I don't really know. You are  
23 saying on a monthly basis? Are you saying  
24 overall.

25 Q Yeah. In any given month, would

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1 IKIMULISA LIVINGSTON

2 you say you come in five times a month, ten  
3 times a month?

4 A Certainly less than ten times a  
5 month.

6 Q On average, how many bylines do you  
7 have in the paper on any given month?

8 A I do not know.

9 Q Do you ever calculate how many  
10 bylines you have per quarter, per year? Is  
11 that something you look at?

12 A At one point, I did do a search and  
13 my byline has appeared thousands of times in  
14 the New York Post.

15 Q During your 15 years of employment?

16 A That's correct.

17 Q So would you agree that you have a  
18 lot of stories that do get printed in the  
19 New York Post if you had thousands of  
20 bylines?

21 A I had a lot of stories that did get  
22 printed in the New York Post.

23 Certainly not as many in the last  
24 few years.

25 Not counting 2008 when I had more

1 IKIMULISA LIVINGSTON

2 front-page stories than certainly I ever had  
3 before and more stories than I think I've  
4 written in previous years.

5 I did a lot of work in 2008. I  
6 worked on a lot of stories.

7 Q And was that the year you covered  
8 the Sean Bell trial?

9 A That's correct.

10 Q How many front pages did you get --  
11 did you have in 2008?

12 A I don't know exactly how many front  
13 pages I had, but for the most part just  
14 about every day of the trial, the story was  
15 on the front page. With the exception of  
16 Eliot Spitzer, I think.

17 Q Do you know how many front pages  
18 you've had at the New York Post?

19 A No, I don't.

20 Q That's not something you count, I  
21 guess?

22 A I really -- I framed my first front  
23 page story that I did. It was on Darryl  
24 Strawberry. And I did some other stories  
25 that I was very proud of that I framed that

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<p style="text-align: right;">Page 218</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 A Yes.</p> <p>3 Q And when you became the Queens</p> <p>4 court reporter, the New York Post continued</p> <p>5 to allow you to have a car allowance; isn't</p> <p>6 that right?</p> <p>7 A When I went to the Queens</p> <p>8 Courthouse?</p> <p>9 Q Yes.</p> <p>10 A I did continue to be a general</p> <p>11 assignment reporter on Sundays, yes.</p> <p>12 And may I --</p> <p>13 Q Of course.</p> <p>14 A And as part of my job covering the</p> <p>15 Queens County Courthouse, I also used my</p> <p>16 vehicle to do reporting, to go to where I</p> <p>17 needed to go in order to cover a story that</p> <p>18 was part of the Queens County Courthouse</p> <p>19 beat, such as lawsuit stories.</p> <p>20 Q Are you aware of the fact that you</p> <p>21 were the only courthouse reporter to get a</p> <p>22 car allowance?</p> <p>23 A I'm not aware of what other</p> <p>24 courthouse reporters are given in terms of</p> <p>25 their car allowance or not.</p>	<p style="text-align: right;">Page 219</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 Q And your car allowance is</p> <p>3 approximately \$325 a month; is that right?</p> <p>4 A Minus taxes.</p> <p>5 Q Well, of course.</p> <p>6 A Yes.</p> <p>7 Q Are you aware of the fact that out</p> <p>8 of 48 full-time reporters at the New York</p> <p>9 Post, you were one of five who currently</p> <p>10 receives a car allowance?</p> <p>11 A Are you asking if I was aware of</p> <p>12 that?</p> <p>13 Q I'm asking if you are aware of</p> <p>14 that.</p> <p>15 A I was not aware of that, if that is</p> <p>16 the case.</p> <p>17 Q What is your present compensation?</p> <p>18 A The lower 70s.</p> <p>19 Q Has your salary ever been decreased</p> <p>20 during the course of your employment at the</p> <p>21 Post?</p> <p>22 A My salary hasn't decreased, but my</p> <p>23 salary has not kept pace with cost of living</p> <p>24 either, so I haven't kept pace with cost of</p> <p>25 living.</p>
<p style="text-align: right;">Page 220</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 Q You received salary increases,</p> <p>3 raises during the course of your employment</p> <p>4 at the Post?</p> <p>5 A Not always.</p> <p>6 Q Not in the last few years?</p> <p>7 A I received a raise this last year.</p> <p>8 Before that I hadn't received a raise</p> <p>9 until -- the last time was in '08 when I</p> <p>10 received a 1 percent raise.</p> <p>11 Q Do you know if there are white</p> <p>12 reporters who didn't receive raises in 2009</p> <p>13 and 2010?</p> <p>14 A I don't know whether white</p> <p>15 reporters received raises or not.</p> <p>16 Q Well, do you know any reporters who</p> <p>17 received raises in 2010 or 2009?</p> <p>18 A Do I know any white reporters?</p> <p>19 Q Do you know of any reporters, any</p> <p>20 reporters who received raises at the New</p> <p>21 York Post in 2009 or 2010?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if there was a salary</p> <p>24 freeze at the New York Post?</p> <p>25 A I don't know if there was a salary</p>	<p style="text-align: right;">Page 221</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 freeze.</p> <p>3 Q In your lawsuit you claim that you</p> <p>4 are paid less than white counterparts.</p> <p>5 What is the basis for that claim?</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 REDACTED</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 IKIMULISA LIVINGSTON

2 rewrite?

3 A I didn't have a rewrite all the  
4 time. I had a rewrite -- there was someone  
5 who worked with me, Clemente \*Mercier, who  
6 worked with me when I was covering the Sean  
7 Bell trial. And essentially, that was to  
8 get copy in really, really fast so we can  
9 get something up for the Web during the  
10 afternoon break, during the lunch break, and  
11 get something going as soon as possible  
12 after the close of the day.

13 Q Is it your testimony that your  
14 stories weren't rewritten, other than the  
15 Sean Bell's stories?

16 MR. THOMPSON: Objection.

17 A Some of my stories went into the  
18 paper pretty much barely changed. And then  
19 some stories that I worked on through the  
20 course of the day, I would talk to my  
21 editor, my editor will tell me -- or I would  
22 ask my editor, what length do you want that  
23 story, and I would be told a length and I  
24 would write to that length.

25 And later on in the day, that

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2 evening after the story was in, lot of time  
3 the story was cut and in the process of  
4 cutting it, you rearrange it or shorten it  
5 or rewrite it.

6 Q When you say some of your stories  
7 "went into the paper pretty much barely  
8 changed," isn't it true that the majority of  
9 your stories were edited and rewritten?

10 A I remember I did a story about a  
11 woman who killed herself, who jumped from a  
12 building on 57 Street, and that story went  
13 into the paper pretty much unchanged.

14 Q I'm not asking if there's ever been  
15 a story that you wrote that actually made it  
16 into the paper.

17 The question was: Isn't it true  
18 that the majority of your stories written  
19 while you were a Queens Courthouse reporter  
20 were edited and rewritten?

21 A Well, actually every story is  
22 edited, because that's what the editors do,  
23 they edit your story. But I wouldn't say  
24 every story was rewritten. Sometimes it was  
25 cuts.

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1 IKIMULISA LIVINGSTON

2 Q I didn't say "every story."

3 Isn't it true that the majority of  
4 your stories written while you were a Queens  
5 Courthouse reporter were rewritten?

6 A I don't think that's the case. I  
7 think a lot of my stories were cut, despite  
8 the fact I asked for a length, and I turned  
9 in the length that they asked for and it was  
10 cut and therefore rewritten or edited down.

11 Q But it's your recollection that the  
12 majority of your stories while you were a  
13 Queens Courthouse reporter weren't  
14 rewritten?

15 A Through the course of the day, I  
16 would talk to my editor, whomever the editor  
17 was. I would --

18 MR. THOMPSON: Let the record  
19 reflect --

20 THE WITNESS: Yeah, I'm  
21 distracted.

22 MR. THOMPSON: Let the record  
23 reflect that in-house counsel for  
24 News Corp. and the New York Post,  
25 Jordan Lippner, has again engaged in

1 IKIMULISA LIVINGSTON

2 improper contact. He just said out  
3 loud on the record in response to  
4 Ms. Livingston's answer that it's a  
5 simple question, which has disrupted  
6 the witness' testimony.

7 And Mr. Lippner, I ask you again to  
8 stop that, and if you continue I will  
9 call the judge. I'm tired of warning you  
10 about your improper conduct.

11 Let the record reflect that Jordan  
12 Lippner is motioning to the phone for me  
13 to call the judge regarding his improper  
14 conduct.

15 MS. LOVINGER: Let's back up  
16 and look at the question that's on  
17 the record.

18 BY MS. LOVINGER:

19 Q Ms. Livingston, is it your  
20 testimony that the majority of the stories  
21 you wrote while you were a Queens Courthouse  
22 reporter were not rewritten by one of your  
23 editors?

24 A As I stated, in the course of the  
25 day I would ask what length they wanted for

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Page 230	Page 231
<p>1 IKIMULISA LIVINGSTON</p> <p>2 salary also didn't change; is that right?</p> <p>3 A That's correct. My base salary did</p> <p>4 not change.</p> <p>5 Q</p> <p>6 REDACTED</p> <p>7</p> <p>8</p> <p>9 A I just stated that</p> <p>10 doing the same job, actually doing less, but</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15 Q And are you aware of the fact that</p> <p>16 your Queens Courthouse reporter salary is</p> <p>17 higher than the salary of other general</p> <p>18 assignment reporters?</p> <p>19 MR. THOMPSON: Objection.</p> <p>20 A I don't have a list of what other</p> <p>21 reporters make.</p> <p>22 Q You were never an editor at the New</p> <p>23 York Post; is that right?</p> <p>24 A No, no. I know there are occasions</p> <p>25 when -- never mind. No, I was never an</p>	<p>1 IKIMULISA LIVINGSTON</p> <p>2 editor at the New York Post.</p> <p>3 Q Are you unhappy with the terms and</p> <p>4 conditions of your employment at the New</p> <p>5 York Post?</p> <p>6 A I'm unhappy about the hostile and</p> <p>7 racial environment that I work in, yes.</p> <p>8 Q In the last five years, have you</p> <p>9 sought employment elsewhere?</p> <p>10 A Last five years, yes.</p> <p>11 Q Where have you applied for other</p> <p>12 jobs?</p> <p>13 A I've applied at universities. I've</p> <p>14 applied at The New York Times. I've applied</p> <p>15 for public relations jobs. That sort of</p> <p>16 thing.</p> <p>17 Q And what was the last one? Public</p> <p>18 relation job?</p> <p>19 A That's correct.</p> <p>20 Q Someone told me recently you don't</p> <p>21 apply for jobs at The New York Times.</p> <p>22 But how did you find out about</p> <p>23 an opening at The New York Times?</p> <p>24 A I didn't find out about an opening.</p> <p>25 I attended a job conferences and The New</p>
Page 232	Page 233
<p>1 IKIMULISA LIVINGSTON</p> <p>2 York Times had a booth there, a recruiter</p> <p>3 there, and I submitted my resume.</p> <p>4 Q For what type of position did you</p> <p>5 submit your resume?</p> <p>6 A For a reporter position.</p> <p>7 Q When was this job conference?</p> <p>8 A I don't remember which conference</p> <p>9 it was. It was an NABJ conference.</p> <p>10 Q NABJ?</p> <p>11 A NABJ stands for National</p> <p>12 Association of Black Journalists.</p> <p>13 Q Where was this NABJ conferences</p> <p>14 held?</p> <p>15 A NABJ has conferences in different</p> <p>16 cities every year.</p> <p>17 Q Well, when was the last time you</p> <p>18 went to the NABJ conference?</p> <p>19 A I attended the conference last</p> <p>20 year.</p> <p>21 Q Where was it held last year?</p> <p>22 A Philadelphia.</p> <p>23 Q So that was in 2011. What month</p> <p>24 was that?</p> <p>25 MR. THOMPSON: Objection.</p>	<p>1 IKIMULISA LIVINGSTON</p> <p>2 Which question are you asking? What</p> <p>3 year or what month?</p> <p>4 MS. LOVINGER: Well, she said</p> <p>5 it was 2011.</p> <p>6 Q Do you know what month in 2011 you</p> <p>7 attended the NABJ conference in</p> <p>8 Philadelphia?</p> <p>9 A It's in the summer, so it's usually</p> <p>10 July -- either in July or August. I'm not</p> <p>11 sure which one right now. July or August, I</p> <p>12 believe.</p> <p>13 Q Did you apply to any other news</p> <p>14 organization other than The New York Times</p> <p>15 at the NABJ conference in 2011?</p> <p>16 A I didn't say I applied for The New</p> <p>17 York Times at the 2011 conference.</p> <p>18 Q You submitted a resume?</p> <p>19 A Not at that conference.</p> <p>20 Q Oh, not at that conference.</p> <p>21 Well, okay. We'll back up in a</p> <p>22 minute but in 2011, did you submit a resume</p> <p>23 or application for any positions either</p> <p>24 during or after the NABJ conference?</p> <p>25 A During the conference I attended</p>

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<p style="text-align: right;">Page 246</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 A What other reason?</p> <p>3 Q Yeah.</p> <p>4 A Wanted to talk to them.</p> <p>5 Q About story ideas or just social</p> <p>6 reasons?</p> <p>7 A It depends.</p> <p>8 Q And you do communicate with other</p> <p>9 New York Post employees during the day,</p> <p>10 isn't that right?</p> <p>11 A Not on a daily basis unless it's a</p> <p>12 story that we're working on together. And a</p> <p>13 lot of times I don't actually know who the</p> <p>14 other reporters are working on a story, on</p> <p>15 the same story I'm working on.</p> <p>16 Q But you are free to call any New</p> <p>17 York Post employee you want during the day,</p> <p>18 right?</p> <p>19 MR. THOMPSON: Objection.</p> <p>20 A Is this the way I'm supposed to be</p> <p>21 speaking with my colleagues, is just by</p> <p>22 randomly calling someone? Because that</p> <p>23 doesn't really seem like an organic way</p> <p>24 to --</p> <p>25 Q Are you asking me a question?</p>	<p style="text-align: right;">Page 247</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 A I apologize if I'm asking you a</p> <p>3 question. I don't understand the context of</p> <p>4 your question.</p> <p>5 Q Are you not free to call the</p> <p>6 newsroom at any point during the day?</p> <p>7 MR. THOMPSON: Objection.</p> <p>8 Q Is that right?</p> <p>9 A I'm free to call (212)930-8500</p> <p>10 whenever I'd like, yes.</p> <p>11 Q And someone will answer the phone,</p> <p>12 right?</p> <p>13 A And someone will answer the phone,</p> <p>14 yes. Sometimes someone will answer the</p> <p>15 phone.</p> <p>16 Q Now, doesn't the New York Post</p> <p>17 reimburse a part of your cellphone bill?</p> <p>18 A Yes. They reimburse me two-thirds</p> <p>19 of the bill. However, I actually paid for</p> <p>20 the device.</p> <p>21 Q Well, you also use the device for</p> <p>22 personal reasons; isn't that right?</p> <p>23 A The device is my phone, yes.</p> <p>24 Q So it's contemplated that you'll</p> <p>25 use your phone for work-related reasons,</p>
<p style="text-align: right;">Page 248</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 correct?</p> <p>3 A Yes, in order to give my notes to a</p> <p>4 rewrite person, yeah. I use my phone to</p> <p>5 relay those notes.</p> <p>6 Q And your phone enables you to be</p> <p>7 contacted when you are out running on</p> <p>8 assignments, correct?</p> <p>9 A That's correct. It allows the</p> <p>10 editors to reach out to me.</p> <p>11 Q And it's your cellphone; therefore,</p> <p>12 you can be reached immediately. Is that</p> <p>13 right?</p> <p>14 A Yeah, usually.</p> <p>15 Q And other general assignment</p> <p>16 reporters also use personal cellphones;</p> <p>17 isn't that right?</p> <p>18 A I think most people in this day and</p> <p>19 age have cellphones, yeah, including other</p> <p>20 general assignment reporters.</p> <p>21 Q But the question was: Other</p> <p>22 general assignment reporters also use their</p> <p>23 personal cellphones to carry out their</p> <p>24 reporting responsibilities; isn't that</p> <p>25 right?</p>	<p style="text-align: right;">Page 249</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 A I believe other reporters use their</p> <p>3 cellphones, yes.</p> <p>4 Q Ms. Livingston, you testified</p> <p>5 earlier that you've heard Ms. Gotthelf and</p> <p>6 Mr. Greenfield use the term "low rent"; is</p> <p>7 that right?</p> <p>8 A That's correct.</p> <p>9 Q Now, Ms. Gotthelf and</p> <p>10 Mr. Greenfield never said that stories about</p> <p>11 African-Americans and Latinos are low rent;</p> <p>12 isn't that right?</p> <p>13 A No, not at any time did they come</p> <p>14 right out and say, "Stories about black</p> <p>15 people and Latinos are low rent." They just</p> <p>16 refer to stories about African-Americans and</p> <p>17 Latinos as low rent.</p> <p>18 Q So Ms. Livingston, you are saying</p> <p>19 that Ms. Gotthelf and Mr. Greenfield</p> <p>20 described some stories that happened to be</p> <p>21 about African-Americans and/or Latinos as</p> <p>22 low rent; is that right?</p> <p>23 A On a frequent basis, yes.</p> <p>24 Q Are these stories that Ms. Gotthelf</p> <p>25 and Mr. Greenfield referred to as low rent</p>



<p style="text-align: right;">Page 254</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 sorry.</p> <p>3 MR. THOMPSON: Sure.</p> <p>4 A That was my perception after</p> <p>5 Michelle and Dan would on numerous occasions</p> <p>6 refuse stories because they were low rent</p> <p>7 and because they were stories about black</p> <p>8 people and Latino people.</p> <p>9 Q But Ms. Livingston, isn't it true</p> <p>10 that you pitched stories about white people</p> <p>11 that they called low rent?</p> <p>12 A I don't recall. I don't remember</p> <p>13 specific story ideas that they called low</p> <p>14 rent that were about white people.</p> <p>15 MR. THOMPSON: When you have a</p> <p>16 moment, doesn't have to be now, let's</p> <p>17 take a break. Whenever is a good</p> <p>18 time to break.</p> <p>19 In fact, can we take a break now?</p> <p>20 MS. LOVINGER: I have a couple</p> <p>21 more.</p> <p>22 MR. THOMPSON: A couple more?</p> <p>23 MS. LOVINGER: It will be like</p> <p>24 ten minutes.</p> <p>25 MR. THOMPSON: No, that's not a</p>	<p style="text-align: right;">Page 255</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 couple of minutes.</p> <p>3 MS. LOVINGER: Ten minutes.</p> <p>4 MR. THOMPSON: Ten minutes is</p> <p>5 not a couple more. You are talking</p> <p>6 to your colleagues. We're taking a</p> <p>7 break.</p> <p>8 MS. LOVINGER: I'm not talking</p> <p>9 to anyone.</p> <p>10 MR. THOMPSON: We're taking a</p> <p>11 break. Just like you ask for breaks,</p> <p>12 I need a break right now. I'm taking</p> <p>13 a break.</p> <p>14 MS. LOVINGER: How many minutes</p> <p>15 do you need?</p> <p>16 MR. THOMPSON: About five</p> <p>17 minutes.</p> <p>18 MS. LOVINGER: I'm just asking.</p> <p>19 That's a fair question.</p> <p>20 MR. THOMPSON: Five minutes.</p> <p>21 Thank you.</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 now 4:59 p.m. We're going off the</p> <p>24 record.</p> <p>25 (A brief recess was</p>
<p style="text-align: right;">Page 256</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 taken.)</p> <p>3 THE VIDEOGRAPHER: This is the</p> <p>4 start of Tape Number 5. The time is</p> <p>5 now 5:13 p.m. We're now back on the</p> <p>6 record.</p> <p>7 MR. THOMPSON: Thanks for the</p> <p>8 short break which allowed me to go to</p> <p>9 the restroom.</p> <p>10 MS. LOVINGER: We gave you all</p> <p>11 14 minutes.</p> <p>12 BY MS. LOVINGER:</p> <p>13 Q Ms. Livingston, going back to your</p> <p>14 time as a Queens Court reporter, were you</p> <p>15 ever criticized for missing parts of stories</p> <p>16 that the Daily News got?</p> <p>17 A I'm sorry. Missing parts of</p> <p>18 stories?</p> <p>19 Q Yeah. For missing facts in stories</p> <p>20 that you reported that were reported in the</p> <p>21 Daily News?</p> <p>22 A I don't recall that happening.</p> <p>23 Q Were you ever reprimanded by your</p> <p>24 supervisor for not asking the right</p> <p>25 questions?</p>	<p style="text-align: right;">Page 257</p> <p>1 IKIMULISA LIVINGSTON</p> <p>2 MR. THOMPSON: Objection.</p> <p>3 A What does "reprimanded" mean?</p> <p>4 Reprimanded in what way?</p> <p>5 Q Were you ever criticized by your</p> <p>6 supervisor for not asking the right</p> <p>7 questions during your time as a Queens</p> <p>8 Courthouse reporter?</p> <p>9 A I recall Zach Haberman berating me</p> <p>10 for just about everything, including things</p> <p>11 he didn't even understand.</p> <p>12 Q Did Zach Haberman ever criticize</p> <p>13 you for not asking the right questions as a</p> <p>14 Queens Courthouse reporter?</p> <p>15 A Zach Haberman criticized me for</p> <p>16 questions I did ask. He criticized me for</p> <p>17 questions I may not have asked. He</p> <p>18 criticized me for not knowing what forceps</p> <p>19 were. He criticized me when he didn't quite</p> <p>20 understand why psychiatrists can't have sex</p> <p>21 with their patients.</p> <p>22 He criticized me on a number of</p> <p>23 occasions about a number of things in a</p> <p>24 hostile, screaming, cursing manner.</p> <p>25 Q Did Zach Haberman criticize you for</p>

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2 not checking all of your facts in stories?

3 A I think I need some specifics in  
4 terms of what facts. I don't understand  
5 what that means.

6 Q Well, do you recall Zach Haberman  
7 ever criticizing you for not taking  
8 initiative as a reporter?

9 A No.

10 Q Do you recall Zach Haberman ever  
11 criticizing you for not checking case files  
12 as a Queens Court reporter?

13 A Oh, yeah, I remember him  
14 criticizing me for not checking a case file  
15 that was sealed; therefore, it couldn't have  
16 been checked because it was sealed.

17 Q Did Zach Haberman yell at you while  
18 you were having these conversations?

19 A On numerous occasions he did yell  
20 and scream and use curse words. Sometimes  
21 he didn't yell and scream. Sometimes he  
22 just used curse words.

23 Yeah, he was demeaning and  
24 demoralizing in a number of ways.

25 Q And you testified earlier that Zach

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2 Haberman was also demeaning and demoralizing  
3 and cursed at your former colleague Denise  
4 Buffa; is that right?

5 MR. THOMPSON: Objection.

6 Objection.

7 A I do not believe that's what I  
8 said.

9 Q Oh, what did you say about Denise  
10 Buffa?

11 A I said that she had some problems  
12 with him.

13 Q And do you recall testifying this  
14 morning that Zach Haberman also yelled at  
15 Denise Buffa?

16 A I believe I said I didn't know if  
17 he yelled at her. I think that she told me  
18 she had problems with him.

19 Q Your testimony this morning was, "I  
20 know he yelled at me and he yelled at  
21 Denise. I know that he spoke to her in an  
22 abusive way as well."

23 Okay. I'm going to play for you an  
24 audio exhibit and this is going to be  
25 Number 12.

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1 IKIMULISA LIVINGSTON

2 We're going to mark this as  
3 Livingston Exhibit Number 12.

4 This is an audio recording that you  
5 produced in this litigation.

6 (Livingston Exhibit 12, Audio  
7 CD disk, was marked for  
8 Identification.)

9 (Audio CD is played.)

10 MR. THOMPSON: Wait. There's  
11 more to this tape. Why would you cut  
12 it off when it's not finished.

13 MS. LOVINGER: There's another  
14 30 seconds or so.

15 MR. THOMPSON: So why don't you  
16 play the rest of it for completeness.

17 MS. LOVINGER: We can play the  
18 rest of it.

19 MR. THOMPSON: Please do.

20 (Audio CD played to end.)

21 BY MS. LOVINGER:

22 Q Ms. Livingston, this is one of the  
23 recordings you made and produced in this  
24 litigation, correct?

25 A That is correct.

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1 IKIMULISA LIVINGSTON

2 Q And who is this a recording of?

3 A That's myself and Zach Haberman.

4 Q Do you believe this call was  
5 abusive and discriminatory?

6 A Yes, overall. Yes, it was, in  
7 addition to all the other calls when he  
8 screamed and cursed and yelled at me. Yes.

9 Q Wasn't it part of your job to  
10 obtain transcripts to get the full story?

11 A Sometimes I would get transcripts,  
12 yes. Other times I did not get transcripts.

13 Other times Zack told me not to buy  
14 the transcripts because he didn't want to  
15 spend the money.

16 Q Well, based on this call, it sounds  
17 like you had missed a very important  
18 transcript; is that correct?

19 A I don't think I missed a  
20 transcript, no.

21 Q Well, were you at all concerned  
22 that the Daily News had published quotes  
23 from a 911 call that you had completely  
24 missed?

25 MR. THOMPSON: Objection.

66 (Pages 258 to 261)

Page 266

1 IKIMULISA LIVINGSTON

2 Haberman is evidence of discrimination.

3 A Again, Zack was berating me and  
4 using profane words and in the context of  
5 other conversations which I had with him  
6 where he berated me and screamed and used  
7 foul language.

8 And in the context of the story  
9 ideas that I presented to him that he turned  
10 down and everything else, and the entire  
11 racial tone of the New York Post, yes, that  
12 conversation in addition to all the others  
13 that I had with him where he was yelling and  
14 screaming and berating me and saying the  
15 F-word and, yeah, that's all part of the  
16 discrimination that I had to endure that I  
17 am still enduring while an employee of the  
18 New York Post.

19 Q Okay.

20 We're talking now just about the  
21 recording we listened to, this conversation  
22 between you and Zack.

23 I'd like to know how you know that  
24 Zach Haberman was not berating you because  
25 of what he perceived as your very poor job

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1 IKIMULISA LIVINGSTON

2 performance and not because of the color of  
3 your skin.

4 A When Zack was a copy kid at the New  
5 York Post and I was already a senior  
6 reporter and I was writing numerous stories,  
7 I wrote a beautiful story about a 911  
8 firefighter widow and her family on  
9 Christmas Day that Mike Heckman told me it  
10 was so well written he couldn't touch it.  
11 He had a problem editing it for space. He  
12 had a problem with that.

13 Yet somehow when Zack becomes my  
14 editor and when Michelle becomes my editor  
15 and Dan Greenfield is my assignment editor,  
16 I apparently am a horrible reporter. I am a  
17 horrible writer. I can't function.  
18 According to them in these evaluations I  
19 received, I'm inept. Yet I've written in  
20 excess -- I've written thousands and wrote  
21 thousands and thousands of stories for the  
22 New York Post.

23 So in the grand scheme of  
24 things yeah, that conversation was racist  
25 just like -- discriminatory -- just like the

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1 IKIMULISA LIVINGSTON

2 other conversations I've had with him were  
3 discriminatory. Just like -- I mean, some  
4 of the photographers I've worked with have  
5 actually told me that the photo desk tells  
6 them not to take pictures of black people or  
7 black women.

8 And one photographer actually told  
9 me how he was working on a story, lawsuit  
10 story and after he turned in the pictures,  
11 the woman who was the focus point of the  
12 lawsuit was a black woman, they dropped the  
13 story.

14 This is all discriminatory.

15 In terms of my treatment, in terms  
16 of the treatment of Leonard Greene, in terms  
17 of Sandra Guzman being fired. In terms of  
18 Ebony Clark and Christina and Doug Montero,  
19 we work and worked in a hostile work  
20 environment. We were discriminated against.

21 It's been a pattern from before and  
22 especially after that cartoon was published  
23 showing a black man being depicted as an  
24 ape, as a chimpanzee, is telling me that my  
25 employers think that of me.

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1 IKIMULISA LIVINGSTON

2 Q Ms. Livingston, I asked you a  
3 question about a phone conversation that  
4 took place while you were the Queens Court  
5 reporter which was sometime in 2007 or 2008,  
6 possibly in 2006. And I just asked you a  
7 very specific question about how you know  
8 that Zach Haberman was not berating you  
9 because of what he perceived as your very  
10 poor job performance and not because of the  
11 color of your skin.

12 And you are providing an answer  
13 referencing other employees and a cartoon  
14 that appeared in the newspaper in  
15 February 2009, long after you stopped being  
16 a Queens Court reporter.

17 And it's very important that we  
18 stay within the timeline and that you answer  
19 the questions I'm asking.

20 MR. THOMPSON: Objection.

21 Asked and answered.

22 MS. LOVINGER: No, Ken.

23 MR. THOMPSON: The last  
24 question you asked is clear.

25 Objection. You may not have liked

68 (Pages 266 to 269)

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1 IKIMULISA LIVINGSTON

2 A I don't remember the exact date of  
3 that.

4 Are you referencing an e-mail?

5 Q I'm asking if you recall that  
6 Michelle Gotthelf warned you that you could  
7 be removed from the Queens Courthouse  
8 reporter position as early as May 2008.

9 A I recall receiving e-mail from  
10 Michelle. I don't remember the exact date  
11 in which she says something of that nature.

12 Q So when you were removed from the  
13 Queens Courthouse in November 2008, it  
14 didn't come as a surprise; is that right?

15 A No, it still came as a surprise.

16 MR. THOMPSON: Objection.

17 Q Well, if Michelle Gotthelf warned  
18 you that you could be removed back in  
19 May 2008, why was it a surprise when it  
20 actually happened five months later?

21 MR. THOMPSON: Objection.

22 Q Or six months later?

23 MR. THOMPSON: Objection.

24 A When I was removed from the Queens  
25 County Courthouse, it was a surprise that I

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1 IKIMULISA LIVINGSTON

2 dated May 22, 2008, Bates Number  
3 IL-115, was marked for  
4 Identification.)

5 BY MS. LOVINGER:

6 Q A minute ago you testified that you  
7 were surprised because you had never  
8 produced as many front-page stories as you  
9 had that year.

10 Can you tell me what stories other  
11 than the Sean Bell trial you had that made  
12 the front page that year?

13 A Right now, I can't think of  
14 anything else. I'm trying to think of maybe  
15 any of the Mallayev-Borukhova stories were  
16 on the front. They may have been. I don't  
17 recall offhand right now.

18 Q Directing your attention to what's  
19 been marked Livingston Exhibit 15, the  
20 e-mail from Michelle Gotthelf.

21 It states "Col had a fit over the  
22 story you missed this morning. He also  
23 wondered why we're keeping you in that court  
24 when Nicole Bode, who is not a fantastic  
25 reporter, is managing to beat you

Page 295

1 IKIMULISA LIVINGSTON

2 was being demoted.

3 Q Can you tell me why it was a  
4 surprise when one of your supervisors warned  
5 you that it may happen?

6 A Because I have never produced so  
7 many front-page stories as I had that year.

8 I worked extremely hard giving them  
9 quality stories about the Sean Bell trial  
10 and other stories.

11 Q Are you done with your answer?

12 A Yes.

13 Q Well, isn't it true that the Sean  
14 Bell trial was over by the end of May 2008?

15 A Yes, I believe it was over by then.

16 MS. LOVINGER: I'm going to  
17 show you what's been marked -- a  
18 document that's been marked as  
19 Livingston Exhibit 15.

20 And this is an e-mail Bates stamped  
21 Number IL-115. And it's an e-mail from  
22 Michelle Gotthelf to you dated May 22,  
23 2008.

24 Take a look at this e-mail.

25 (Livingston Exhibit 15, E-mail

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1 IKIMULISA LIVINGSTON

2 consistently. He also brought up how  
3 labor-intensive it was to assign you a  
4 dedicated rewrite for the Sean Bell trial  
5 when court reporters need to be able write  
6 clear copy on the fly.

7 "One thing is clear, Kim, you're on  
8 Col's radar and that's a very dangerous  
9 place to be. It means you can be plucked  
10 from that court very soon. You have to step  
11 it up. Michelle."

12 Do you remember receiving this  
13 e-mail from Ms. Gotthelf?

14 A I remember receiving this e-mail.  
15 And I remember disagreeing with her  
16 wholeheartedly about being beat consistently  
17 by Nicole on stories. That's not the case.

18 I'm trying to remember exactly  
19 which story this was that she did beat me  
20 on.

21 I think it might have been the  
22 Bonelli story. This is a mob guy.

23 But I disagree. I wasn't being  
24 beat consistently by Nicole. And I truly  
25 believe this is just a paper trail in order

75 (Pages 294 to 297)



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1 IKIMULISA LIVINGSTON  
 2 for them to remove me and further  
 3 demonstrates the pattern of racism that  
 4 continues to exist at the New York Post.  
 5 Q Did you do anything different in  
 6 terms of your performance after you received  
 7 this e-mail from Ms. Gotthelf?  
 8 MR. THOMPSON: Objection.  
 9 A Did I do anything different -- I'm  
 10 not quite sure I understand.  
 11 Q Did you do anything different in  
 12 terms of how you performed your job at the  
 13 Queens Courthouse after you received this  
 14 e-mail from Michelle Gotthelf?  
 15 A I continued to look for good and  
 16 interesting, newsworthy lawsuits in the  
 17 civil courthouse.  
 18 I continued to cover whatever  
 19 criminal cases that were ongoing at the  
 20 Queens County Courthouse. I continued to  
 21 check the files for various defendants. I  
 22 continued to work on whatever stories were  
 23 ongoing in the courthouse.  
 24 I was consistent in terms of being  
 25 persistent in looking for good stories for

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1 IKIMULISA LIVINGSTON  
 2 Q The what courthouse?  
 3 A Sutphin.  
 4 Q The what courthouse?  
 5 A Sutphin.  
 6 Q Okay. Is that the Queens  
 7 Courthouse?  
 8 A It's the civil -- where civil  
 9 lawsuits are filed.  
 10 Q Did you do anything else different?  
 11 A And I pitched them good story  
 12 ideas.  
 13 Q When you pitched stories to  
 14 Michelle Gotthelf and Dan Greenfield, was it  
 15 your practice to tell them the race of the  
 16 individuals involved in the stories?  
 17 A I'm not sure I put in race for  
 18 certain individuals or for certain story  
 19 pitches that I presented.  
 20 Q So when Ms. Gotthelf and  
 21 Mr. Greenfield rejected --  
 22 MS. LOVINGER: I'm going to  
 23 withdraw that question.  
 24 Q Shortly after Col Allan became  
 25 editor in chief in 2001, he fired six

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1 IKIMULISA LIVINGSTON  
 2 the Post and pitching good stories.  
 3 Q Well, you know, you just described  
 4 everything you continued doing.  
 5 But my question is: Did you do  
 6 anything different in terms of how you  
 7 performed your job at the Queens Courthouse  
 8 after you received this e-mail from Michelle  
 9 Gotthelf?  
 10 That's a yes/no question.  
 11 Did you do anything different?  
 12 A I continued to do my job.  
 13 Q Is that a no?  
 14 A I did my job.  
 15 Q So did you do --  
 16 MS. LOVINGER: I'll ask  
 17 Mr. Thompson if he can instruct the  
 18 witness to answer the question.  
 19 BY MS. LOVINGER:  
 20 Q Did you do anything different in  
 21 terms of how you performed your job at the  
 22 Queens Courthouse after you received this  
 23 e-mail from Michelle Gotthelf?  
 24 A I spent more time at the Sutphin  
 25 Courthouse look for lawsuits.

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1 IKIMULISA LIVINGSTON  
 2 editors at the Post; isn't that correct?  
 3 A I don't know the exact number of  
 4 editors but I know he fired a number of  
 5 editors including Lisa Baird, who had been  
 6 the only African-American editor on the  
 7 Metro desk.  
 8 And no one has filled her position  
 9 in terms of being an African-American on the  
 10 Metro desk. And soon after she was fired  
 11 she died of cancer.  
 12 Q And he also fired Stuart Marks?  
 13 A Yes.  
 14 Q And Col Allan also fired Jack  
 15 Newfield?  
 16 A I believe that's correct.  
 17 Q Col Allan also fired Jerry  
 18 Schmetterer.  
 19 A Yes, he fired Jerry Schmetterer,  
 20 too.  
 21 Q Col Allan also fired Michael Lewis  
 22 and Col Allan also fired Mark Kalish?  
 23 A I remember Mark, yes. I don't know  
 24 about the other guy. I'm not really sure  
 25 about him.

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1 IKIMULISA LIVINGSTON

2 Do you think that sometime within the last  
3 five years that you've worked there, there's  
4 been some criticism that was constructive?

5 A I don't know. I think I'd have to  
6 see something specific.

7 Q Prior to December 2009, you didn't  
8 feel like there was any benefit to you  
9 seeing a mental health provider?

10 A There probably was a benefit.  
11 Maybe I could have had better nights' sleep  
12 if I had gone a little sooner.

13 Q Following publication of the  
14 cartoon you referenced earlier that appeared  
15 in the Post in February 2009, did you have a  
16 conversation with any member of senior  
17 management at the New York Post or executive  
18 other than Michelle Gotthelf about the  
19 cartoon?

20 A I only spoke with Michelle about  
21 the cartoon. I only relayed how racist and  
22 discriminatory it was to her.

23 Q Is there anything that the Post did  
24 in the aftermath of the cartoon that  
25 offended you?

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1 IKIMULISA LIVINGSTON  
2 publication of the cartoon?

3 A I believe I did, yes.

4 Q Is there anything else other than  
5 what you just described, which you said was  
6 the denial that black people were seeing it  
7 wrong, that you have personal knowledge of  
8 with respect to the aftermath of the cartoon  
9 that offended you?

10 MR. THOMPSON: Objection.

11 A I'm sorry. I don't understand your  
12 question.

13 Q Is there anything else that  
14 happened in the aftermath of the cartoon  
15 relating to the cartoon that offended you  
16 other than what you just told me?

17 A The whole publication of the  
18 cartoon was offensive. The fact that Sandra  
19 Guzman was fired because she talked about  
20 how disgusting that cartoon was, that was  
21 upsetting to me. The fact that Austin  
22 Fenner was fired because he publicly  
23 acknowledged that that cartoon was  
24 offensive. That was upsetting to me.

25 The fact that I continue to be

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1 IKIMULISA LIVINGSTON

2 MR. THOMPSON: Objection.

3 A Would this be in regards to the  
4 cartoon?

5 Q Oh, yes. I'm sorry.

6 Is there anything that the Post did  
7 in the aftermath of the cartoon, addressing  
8 the cartoon that offended you?

9 A Oh, yeah, the further -- the denial  
10 that black people were seeing it wrong was  
11 offensive, too.

12 How can you tell us what we were  
13 feeling was wrong when it was obvious that  
14 it was a black man, the president of the  
15 United States, the first black president of  
16 the United States being shot and killed --  
17 being depicted as a chimpanzee being shot  
18 and killed by white officers.

19 It was offensive. The cartoon was  
20 offensive. The aftermath of the cartoon,  
21 the fact that I don't believe Col Allan ever  
22 apologized for the cartoon. Rupert Murdoch  
23 apologized for the cartoon.

24 Q Did you see the apology that  
25 appeared in the New York Post following the

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1 IKIMULISA LIVINGSTON

2 discriminated against and received written  
3 warnings and -- and received a written  
4 warning and receive these unfair, inaccurate  
5 evaluations, those are all upsetting to me.

6 Q Anything else?

7 A I can't really think of anything  
8 else right now.

9 Q Since December 2008, have you held  
10 employment with any employer other than the  
11 New York Post?

12 A Yes.

13 Q Can you identify the other  
14 employers?

15 A I did some work for TD Bank.

16 Q For TD Bank?

17 A TD Bank.

18 Q What did you do for TD Bank?

19 A I'm a mystery shopper.

20 Q A mystery shopper?

21 A That's correct.

22 Q What is that? I don't know what  
23 that is.

24 A Mystery shopper is someone who goes  
25 into -- as a mystery shopper, I go to a

81 (Pages 318 to 321)

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1 IKIMULISA LIVINGSTON

2 bank, I conduct a transaction and I write up  
3 what happened during that transaction.

4 Q And how many hours a week do you  
5 work for TD Bank as a mystery shopper?

6 A It varied.

7 Q What was the time period that you  
8 worked for TD Bank?

9 A I don't recall.

10 Q Was it in the last three years?

11 A Yes.

12 Maybe not last three years. Yes.

13 Q Did you work for TD Bank as a  
14 mystery shopper during your downtime with  
15 the Post?

16 MR. THOMPSON: Objection.

17 A A mystery shop would take two  
18 minutes sometimes. And mostly I would work  
19 around my work schedule.

20 Q So were there days when you were  
21 working for the New York Post and finished  
22 an assignment and then did a mystery shop --  
23 is that how you say it?

24 A Sure. If there was something in  
25 the area, that would happen.

1 IKIMULISA LIVINGSTON

2 Q Did you ever inform anyone at the  
3 New York Post that you were doing this job  
4 for TD Bank?

5 A No.

6 Q Did you work for any other employer  
7 other than TD Bank during your employment  
8 with the New York Post?

9 A I did work for another mystery  
10 shopping company, and I would do freelance  
11 occasionally.

12 Q What's the name of that company?

13 A Shop'n Chek.

14 Q You actually have produced 1099s  
15 for 2006 and 2007 from Shop'n Chek.

16 Did you do work for Shop'n Chek in  
17 any other years?

18 A No, I don't think so. I think that  
19 was about it.

20 Q And you were a mystery shopper for  
21 Shop'n Chek as well?

22 A That's correct.

23 Q And did you do mystery shops  
24 sometimes during your downtime at the New  
25 York Post for Shop'n Chek?

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Page 325

1 IKIMULISA LIVINGSTON

2 A I think I again worked around my  
3 schedule. I would do things on the weekends  
4 or after hours.

5 Q Have you ever been unable to work  
6 overtime for the Post because you had to do  
7 work for either TD Bank or Shop'n Chek?

8 A No.

9 Q Did you work for any other employer  
10 other than TD Bank and Shop'n Chek?

11 A I mentioned that I freelanced.

12 Q Who did you freelance for?

13 A I freelanced for Heart and Soul  
14 magazine.

15 Q Heart and Soul?

16 A Heart and Soul magazine.

17 Q What did you do for Heart and Soul  
18 magazine?

19 A Wrote an article or wrote articles.

20 I also --

21 Q What's the time period for that  
22 Heart and Soul magazine work?

23 A Well, I recently did a story for  
24 Heart and Soul.

25 And before, it was a number of

1 IKIMULISA LIVINGSTON

2 years ago.

3 And there was another magazine I  
4 worked for. I don't recall the name of the  
5 other magazine.

6 Q Did you tell any of your --

7 A I'm sorry. I do remember. I  
8 actually did do some work for BET.com.

9 Q What is it called?

10 A BET.com.

11 Q What's BET.com?

12 A "BET" is short for Black  
13 Environment TV or Black Entertainment  
14 Television.

15 Q Did you write articles for the  
16 Website?

17 A I sometimes wrote articles for the  
18 Website.

19 Q Did you get permission from your  
20 editors at the New York Post to write  
21 articles for Heart and Soul?

22 A When I first started doing  
23 freelance, yes.

24 Q Who gave you permission to write  
25 for Heart and Soul?

82 (Pages 322 to 325)

1 I. Livingston

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
AUSTIN FENNER and IKIMULISA LIVINGSTON,

5 Plaintiffs,

6 vs.

09 CV 9832  
(BSJ) (RLE)

7  
8 NEWS CORPORATION, NYP HOLDINGS, INC.,  
d/b/a THE NEW YORK POST and DAN  
9 GREENFIELD and MICHELLE GOTTHELF,

Defendants.

10 -----x

11 CONTINUED VIDEOTAPED

12 DEPOSITION OF IKIMULISA LIVINGSTON

13 New York, New York

14 February 20, 2013

15  
16  
17  
18  
19  
20  
21  
22  
23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 57653



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1 I. Livingston  
2 February 20, 2013

3  
4 Continued videotaped deposition of  
5 IKIMULISA LIVINGSTON, held at KASOWITZ,  
6 BENSON, TORRES & FRIEDMAN, LLP, 1633  
7 Broadway, New York, New York, before  
8 Kathy S. Klepfer, a Registered Professional  
9 Reporter, Registered Merit Reporter,  
10 Certified Realtime Reporter, Certified  
11 Livenote Reporter, and Notary Public  
12 of the State of New York.  
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1 I. Livingston

2  
3  
4 IT IS HEREBY STIPULATED AND  
5 AGREED, by and between the attorneys for  
6 the respective parties herein, that the  
7 filing and sealing be and the same are  
8 hereby waived.

9 IT IS FURTHER STIPULATED AND  
10 AGREED that all objections, except as to  
11 the form of the question, shall be  
12 reserved to the time of the trial.

13 IT IS FURTHER STIPULATED AND  
14 AGREED that the within deposition may be  
15 sworn to and signed before any officer  
16 authorized to administer an oath, with  
17 the same force and effect as if signed  
18 and sworn to before the Court.  
19  
20  
21  
22  
23  
24  
25

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1 I. Livingston  
2 A P P E A R A N C E S:

3  
4 THOMPSON WIGDOR  
5 Attorneys for Plaintiffs  
6 85 Fifth Avenue  
7 New York, New York 10003  
8 BY: LAWRENCE M. PEARSON, ESQ.  
9 NAOMI DABI LANTSBERG, ESQ.

10  
11 KASOWITZ BENSON TORRES & FRIEDMAN  
12 Attorneys for Defendants  
13 1633 Broadway  
14 New York, New York 10019  
15 BY: MARK W. LERNER, ESQ.  
16 BLYTHE E. LOVINGER, ESQ.  
17 GARRETT D. KENNEDY, ESQ.  
18 - and -  
19 J. JORDAN LIPPNER, Esq.  
20 News America Inc.  
21

22 ALSO PRESENT:  
23 Michelle Gotthelf  
24 Dan Greenfield  
25 Dale Swindell, Legal Video Specialist

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1 I. Livingston

2 THE VIDEOGRAPHER: This is the start  
3 of media labeled number 1 of the videotaped  
4 deposition of Ikimulisa Livingston --  
5 correction, the videotaped deposition of  
6 Ikimulisa Livingston in the matter of Austin  
7 Fenner and Ikimulisa Livingston versus News  
8 Corporation, NYP Holdings.

9 This deposition is being held at 1633  
10 Broadway, New York, New York, on February  
11 20, 2013, at approximately 10:22 A.M. My  
12 name is Dale Swindell from TSG Reporting,  
13 Incorporated, and I'm the certified legal  
14 video specialist. The court reporter is  
15 Kathy Klepfer, in association with TSG  
16 Reporting.

17 Will counsel please introduce  
18 yourselves.

19 MR. LERNER: For the defendants, Mark  
20 Lerner, Kasowitz, Benson, Torres & Friedman,  
21 accompanied by Blythe Lovinger and Garrett  
22 Kennedy, also Kasowitz Benson, and Jordan  
23 Lippner, in-house counsel for the defendants  
24 as well.

25 MR. PEARSON: And this is Larry

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1 I. Livingston  
 2 wait in the line for the general public.  
 3 Q. Okay. But you might have to wait in a  
 4 line for people who had went through a separate  
 5 entrance?  
 6 Let me withdraw that. Was there a  
 7 separate press entrance?  
 8 A. No, there wasn't a separate press  
 9 entrance.  
 10 Q. Okay. But there was an entrance for  
 11 the -- for people other than the general public?  
 12 A. Yes.  
 13 Q. And sometimes there was a line at that  
 14 entrance?  
 15 A. Usually there wasn't much of a line.  
 16 Sometimes there would be people in front of me.  
 17 Q. When you worked at the Queens courts,  
 18 how -- how would you research cases about civil  
 19 filings?  
 20 A. I would go to the Sutphin Boulevard  
 21 courthouse and look up -- look through -- look  
 22 through their filings on the computer system.  
 23 Q. And --  
 24 A. That would be the usual way to -- to  
 25 go about looking for stories, in general.

Page 368

1 I. Livingston  
 2 Q. Do you have a TD Bank account?  
 3 A. Yes, I do.  
 4 Q. How long have you had a TD Bank bank  
 5 account?  
 6 A. For several years.  
 7 Q. Do you know what year you took that  
 8 out?  
 9 A. I'm not 100 percent sure when I opened  
 10 that account.  
 11 Q. Do you have any loans with TD Bank?  
 12 A. No, I do not.  
 13 Q. Did you say "no" or "now, I do not"?  
 14 A. No, I do not.  
 15 Q. Have you ever?  
 16 A. No, I've never had a loan with TD  
 17 Bank.  
 18 Q. Now, on your first day of deposition,  
 19 you testified that you had done mystery shopping  
 20 for companies called Shop 'n Chek and  
 21 Contemporary Staffing Solutions, do you recall  
 22 that?  
 23 A. Yes, I do.  
 24 Q. And when you mystery shopped for  
 25 Contemporary Staffing Solutions, you were

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1 I. Livingston  
 2 Sometimes I would have a lawyer source  
 3 who would present me with a story, with a case  
 4 that he had or she had.  
 5 Q. And how often did you go to the civil  
 6 courthouse to review civil filings in say 2008?  
 7 A. Oh, I -- I couldn't tell you. I don't  
 8 know. I don't remember.  
 9 Q. How often did you go to the civil  
 10 courthouse during your time as a -- as the  
 11 Queens court reporter generally to research  
 12 civil filings?  
 13 A. How many times? I don't recall how  
 14 many times I would go.  
 15 Q. Was it more or less than once a week?  
 16 A. Sometimes it was more than once a  
 17 week. Sometimes it was less than once a week.  
 18 Q. So there were weeks that you didn't go  
 19 to the civil courthouse at all to research  
 20 filings?  
 21 A. I don't recall if there were -- if  
 22 there was a single week that went by that I  
 23 didn't go to the courthouse. However -- to the  
 24 Sutphin courthouse. However, if there was --  
 25 actually, I just don't recall.

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1 I. Livingston  
 2 mystery shopping at TD Bank branches, correct?  
 3 A. Yes, that's correct.  
 4 Q. Did you mystery shop for any other  
 5 businesses when you were working for  
 6 Contemporary Staffing Solutions through that  
 7 company?  
 8 A. Oh, yes. Before TD Bank was TD Bank,  
 9 it used to be Commerce.  
 10 Q. Other than TD Bank and Commerce Bank,  
 11 did you mystery shop at any other businesses  
 12 through your employment with Contemporary  
 13 Staffing Solutions?  
 14 A. No.  
 15 Q. You also mystery shopped for Shop 'n  
 16 Chek. What companies did you mystery shop at  
 17 when you were working for Shop 'n Chek?  
 18 A. For the most part, those would be  
 19 the -- the businesses would be mobile phone  
 20 locations and other locations.  
 21 Q. What -- so did that include Verizon?  
 22 A. Yes.  
 23 Q. T Mobile?  
 24 A. Yes.  
 25 Q. AT&T?

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1 I. Livingston  
 2 A. I'm not sure about AT&T, but maybe.  
 3 Q. Sprint?  
 4 A. I think maybe Sprint as well.  
 5 Q. Did you have a Verizon phone when you  
 6 were mystery shopping at Verizon stores?  
 7 A. I don't -- I don't recall.  
 8 Q. Who's your cell carrier?  
 9 A. My cell carrier right now?  
 10 Q. Yes.  
 11 A. My cell carrier right now is Sprint.  
 12 Q. Sprint. And how long has your cell  
 13 carrier been Sprint?  
 14 A. I don't recall how long it's been.  
 15 Q. Was it Sprint during all the time that  
 16 you were doing mystery shopping?  
 17 A. I don't think so, no.  
 18 Q. Who was your carrier before Sprint?  
 19 A. I think -- I'm not really sure.  
 20 Q. Other than Shop 'n Chek and  
 21 Contemporary Staffing Solutions, have you ever  
 22 performed mystery shopping services for any  
 23 other company?  
 24 A. No.  
 25 Q. During the period the last ten years,

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1 I. Livingston  
 2 Commerce -- or Contemporary Staffing?  
 3 MR. PEARSON: Objection.  
 4 A. I did mystery shopping for TD -- or,  
 5 for Contemporary Staffing and Shop 'n Chek.  
 6 Other than that, I don't recall doing any  
 7 other -- having any other jobs beyond  
 8 freelancing. And of course, my job at The New  
 9 York Post.  
 10 Q. When you worked for Contemporary  
 11 Staffing Solutions and you did mystery shopping  
 12 at Commerce Bank and TD Bank, how would you know  
 13 what banks to mystery shop at?  
 14 A. The -- the branch would be a -- I  
 15 would be assigned.  
 16 Q. So -- so Contemporary Staffing  
 17 Solutions assigned you to mystery shop at  
 18 certain branches?  
 19 A. Well, there were a couple different  
 20 ways to go about getting an assignment, so  
 21 sometimes they would -- sometimes I would choose  
 22 a particular branch and then they would approve  
 23 me doing a mystery shop at that branch.  
 24 Q. What were the other ways?  
 25 A. The other ways, sometimes someone

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1 I. Livingston  
 2 have you had employment at any -- from any other  
 3 businesses besides TD Bank -- sorry,  
 4 Contemporary Staffing Solutions, Shop 'n Chek,  
 5 The New York Post and -- and excluding any  
 6 freelance writing that you've done?  
 7 MR. PEARSON: Objection.  
 8 Mischaracterizes.  
 9 A. I'm sorry.  
 10 Q. Do you understand the question?  
 11 A. No. Could you repeat that?  
 12 Q. Yes. You testified in your first  
 13 deposition that you had worked at Shop 'n  
 14 Chek -- you had worked for Shop 'n Chek,  
 15 Contemporary Staffing Solutions, that you had  
 16 also done some freelance work for Heart and Soul  
 17 Magazine.  
 18 Are there any other companies that you  
 19 have had employment with during the last ten  
 20 years?  
 21 MR. PEARSON: Same objection.  
 22 A. I don't remember having any other  
 23 employment.  
 24 Q. Have you ever done any marketing  
 25 research other than through Shop 'n Chek or

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1 I. Livingston  
 2 would reach out to contact me and ask me to  
 3 perform a shop at a certain bank.  
 4 Q. Did Contemporary Staffing Solutions --  
 5 let me withdraw that and ask you another  
 6 question first.  
 7 Who was your point of contact for --  
 8 at the employer for assignments for mystery  
 9 shopping at TD Banks?  
 10 MR. PEARSON: Objection. She never  
 11 said it was an employer.  
 12 A. For -- for my mystery shopping?  
 13 Q. Yes.  
 14 A. I don't recall a specific point person  
 15 or --  
 16 Q. Did you have a single person who was  
 17 your supervisor?  
 18 MR. PEARSON: Objection.  
 19 A. No, I did not have a supervisor.  
 20 Q. Was there a phone number you could  
 21 call and ask them for assignments?  
 22 A. No, that's not the way it worked.  
 23 Q. Did -- did you deal with somebody at  
 24 TD Bank or did you deal with somebody at  
 25 Contemporary Staffing Solutions?

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1 I. Livingston  
 2 go to the branch and go in and speak to the  
 3 personnel at the branch, correct?  
 4 A. That's -- that's -- basically, what I  
 5 would do is I would perform a -- a shop. So I  
 6 would either speak to a teller, do a teller  
 7 transaction, or perhaps speak to a customer  
 8 service representative.  
 9 Q. And when you did a transaction, did  
 10 you do a real transaction? In other words, did  
 11 you carry out an entire transaction at TD Bank?  
 12 A. Such as making a withdrawal?  
 13 Q. Correct.  
 14 A. Yes.  
 15 Q. So you would go to a teller and maybe  
 16 take out \$20, and that would be the transaction?  
 17 A. That's correct.  
 18 Q. Did you always do a transaction when  
 19 you mystery shopped?  
 20 A. No, not always.  
 21 Q. When you didn't do a transaction, what  
 22 would you do in the bank?  
 23 A. I would speak to a customer service  
 24 representative.  
 25 Q. Well, what would you speak about?

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1 I. Livingston  
 2 time when I did ask them about mortgages because  
 3 I was interested in a mortgage.  
 4 Q. But there were times when you asked  
 5 them about mortgages when your sole purpose was  
 6 to do research at the banks, right, mystery  
 7 shop?  
 8 MR. PEARSON: Objection.  
 9 A. My sole purpose -- I'm sorry, what was  
 10 the question again?  
 11 Q. There were times you talked to them  
 12 about mortgages when your sole purpose was to  
 13 mystery shop, right?  
 14 MR. PEARSON: Objection.  
 15 A. My purpose as a mystery is shop was to  
 16 evaluate the employee, so that's --  
 17 Q. When you spoke to them about  
 18 mortgages, there were many times when you spoke  
 19 to them about mortgages with no intention of  
 20 taking out a mortgage, right?  
 21 MR. PEARSON: Objection.  
 22 A. I was evaluating them on their work,  
 23 so, no, there may not be -- I wasn't necessarily  
 24 interested in taking out a mortgage.  
 25 Q. So you were posing as somebody who was

1 I. Livingston  
 2 A. I -- it depended on the kind of shop,  
 3 but I would ask them about perhaps their credit  
 4 cards, their credit card rates; I would ask them  
 5 about mortgages, what kinds of mortgages they  
 6 had, what kind of rates they had; I would ask  
 7 them about their savings accounts, what kinds of  
 8 interest rates they offered; maybe I would ask  
 9 them about a checking account, those sort of  
 10 things; auto loan.  
 11 Q. And had you been instructed by  
 12 Contemporary Staffing Solutions on what kinds of  
 13 topics they wanted you to raise with customer  
 14 service representatives?  
 15 A. There were a list -- there would  
 16 usually be a list of topics to discuss.  
 17 Q. And these weren't necessarily topics  
 18 that you personally, Ms. Livingston, wanted to  
 19 do business with the bank on, right?  
 20 MR. PEARSON: Objection.  
 21 Q. You weren't looking for a mortgage  
 22 from TD Bank at the time that you talked about  
 23 mortgages, right?  
 24 MR. PEARSON: Objection.  
 25 A. Well, actually, there -- there was a

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1 I. Livingston  
 2 interested in taking out a mortgage, right?  
 3 MR. PEARSON: Objection.  
 4 A. I was performing a mystery shop.  
 5 Q. You were pretending to be somebody who  
 6 was interested in a mortgage, but you weren't,  
 7 right?  
 8 MR. PEARSON: Objection.  
 9 A. I was simply performing a mystery  
 10 shop, which was the requirements of the mystery  
 11 shopping program.  
 12 Q. And the requirements were that you  
 13 pretend to be something, to be interested in  
 14 something that you weren't actually interested  
 15 in, right?  
 16 MR. PEARSON: Objection.  
 17 A. I guess I'm not really sure how to --  
 18 how to answer that since I do bank at TD Bank,  
 19 so there are times when I am interested in the  
 20 things that they're telling me about.  
 21 Q. But there are times that you were not  
 22 interested in the things that you were asking  
 23 about, correct?  
 24 MR. PEARSON: Objection.  
 25 A. For the most part, I was interested in



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1 I. Livingston  
 2 learning more information about the topics that  
 3 I did ask them about.  
 4 Q. You weren't interested in your -- for  
 5 your own -- you were interested in it because  
 6 your employer had assigned you to mystery shop,  
 7 right? You weren't interested in it because you  
 8 wanted that -- that service at the time,  
 9 correct?  
 10 MR. PEARSON: Objection as to  
 11 "employer." Objection, asked and answered.  
 12 A. I was doing a mystery shop, and I  
 13 didn't ever really look at them as my employer.  
 14 My employee is The New York Post. Or, my  
 15 employer, I'm sorry, is The New York Post.  
 16 Q. As part of your mystery shopping, you  
 17 were also required to look at different areas in  
 18 the interior of the bank, correct?  
 19 A. I'm sorry, I was -- I was to observe  
 20 the premises, yes.  
 21 Q. You were to look at the penny arcade  
 22 machine, correct?  
 23 A. That's correct.  
 24 Q. The display, correct?  
 25 A. The display monitors, yes.

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1 I. Livingston  
 2 right afterwards, yes.  
 3 Q. You did that -- you did that on a  
 4 notepad?  
 5 A. No.  
 6 Q. How did you do that?  
 7 A. It would be on the -- on the  
 8 transaction slip, if I did that at all.  
 9 Q. When you mystery shopped for Shop 'n  
 10 Chek, you would go to mobile phone stores and  
 11 you would also go to Office Depot and McDonald's  
 12 as well, right?  
 13 MR. PEARSON: Objection.  
 14 A. There were -- when I performed mystery  
 15 shops for Shop 'n Chek, I did perform mystery  
 16 shops for them for some McDonald's and -- and an  
 17 office supply store.  
 18 Q. And you would make purchases at those  
 19 stores?  
 20 A. At McDonald's and the office supply  
 21 store?  
 22 Q. Yes.  
 23 A. Yes.  
 24 Q. Did Shop 'n Chek reimburse you for  
 25 purchases you made during mystery shops?

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1 I. Livingston  
 2 Q. The condition of the premises for  
 3 cleanliness, correct?  
 4 A. That's correct.  
 5 Q. And you would report back to your --  
 6 to Contemporary Staffing Solutions about what  
 7 you saw, right?  
 8 A. That's correct.  
 9 Q. Sometimes you would do more than one  
 10 mystery shop in a given day, correct?  
 11 A. Yes.  
 12 Q. Sometimes you did, in fact, as many as  
 13 four mystery shops in a given day, right?  
 14 MR. PEARSON: Objection.  
 15 A. I don't recall.  
 16 Q. Even more?  
 17 MR. PEARSON: Objection.  
 18 Q. Right?  
 19 A. I don't recall.  
 20 Q. Okay. When you mystery shopped at  
 21 multiple banks on a given day, did you take  
 22 notes so that when you filed your reports, you  
 23 could remember which experiences you had at  
 24 which banks?  
 25 A. Sometimes I would jot down information

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1 I. Livingston  
 2 A. Most of the time, yes.  
 3 Q. And a single mystery shop could take  
 4 half an hour, right?  
 5 MR. PEARSON: Objection.  
 6 A. Mystery shops normally didn't take a  
 7 half hour, no.  
 8 Q. But it could take a half an hour,  
 9 right?  
 10 MR. PEARSON: Objection.  
 11 A. I don't recall doing any mystery shops  
 12 that took a half hour.  
 13 (Livingston Exhibit 18, Shop History  
 14 of Ikimulisa Livingston, bearing Bates Nos.  
 15 NYP-FL00380 through 3998, marked for  
 16 identification, as of this date.)  
 17 BY MR. LERNER:  
 18 Q. Ms. Livingston, I'm putting in front  
 19 of you a document marked Exhibit 18, which was  
 20 produced to you in this litigation. Do you see  
 21 that?  
 22 A. I do see that document in front of me,  
 23 yes.  
 24 Q. And this is a record of the mystery  
 25 shopping that you did through Contemporary

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1 I. Livingston  
 2 Staffing Solutions from 2008 to 2010, correct?  
 3 MR. PEARSON: Objection.  
 4 The witness hasn't had an opportunity  
 5 to review.  
 6 A. I don't really know what the date  
 7 parameters are. I just see the first page here.  
 8 Q. Have you reviewed this document before  
 9 today?  
 10 A. I think I did look at a document like  
 11 this, yes.  
 12 Q. And does it reflect the mystery  
 13 shopping that you did for Contemporary Staffing  
 14 Solutions?  
 15 A. I -- I don't know. I don't recall the  
 16 exact time and dates of mystery shops.  
 17 Q. Uh-huh. Okay. Do you have any reason  
 18 to doubt its accuracy?  
 19 MR. PEARSON: Objection.  
 20 A. I -- I don't know. This came from --  
 21 I don't know where this came from.  
 22 Q. Okay. Could you turn to the page  
 23 Bates-numbered 3983, please. This page lists a  
 24 number of dates in July and August 2008. Do you  
 25 see that in the center column under Dates

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1 I. Livingston  
 2 A. Yes.  
 3 Q. So 14:00 would be 2 P.M., you see  
 4 that?  
 5 A. Yes, I see that.  
 6 Q. And in order to do this mystery  
 7 shopping, you had to leave the Queens courthouse  
 8 and drive to the banks, right?  
 9 A. Not always.  
 10 Q. Did you take the subway sometimes?  
 11 A. No.  
 12 Q. Well, you had to get to the banks,  
 13 correct?  
 14 A. I didn't always perform in-person --  
 15 Q. Okay.  
 16 A. -- shopping.  
 17 Q. How many times for Contemporary  
 18 Staffing Solutions did you actually perform a  
 19 mystery shop that wasn't personally in the bank?  
 20 A. How many times?  
 21 Q. Yes.  
 22 A. I don't recall.  
 23 Q. You would agree with me that the vast  
 24 majority of the times you mystery shopped was in  
 25 person at the banks, right?

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1 I. Livingston  
 2 Shopped?  
 3 A. Yes.  
 4 Q. Now, you were mystery shopping -- you  
 5 were employed as a mystery shopper by  
 6 Contemporary Staffing Solutions in July and  
 7 August of 2008, right?  
 8 A. Are you asking if I was a mystery  
 9 shopper?  
 10 Q. Yes.  
 11 MR. PEARSON: Objection.  
 12 Q. Yes.  
 13 A. I did mystery shop work for, yeah, for  
 14 TD Bank during that time period.  
 15 Q. And do you recall occasions when you  
 16 left the Queens courthouse to perform mystery  
 17 shops during the day?  
 18 MR. PEARSON: Objection.  
 19 A. I recall times that I, during my  
 20 lunch, I would maybe do a mystery shop, yes.  
 21 Q. Okay. Well, this document reflects  
 22 the time of shops, does it not, under Date  
 23 Shopped?  
 24 A. Yes, I see that.  
 25 Q. It uses a 24-hour clock?

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1 I. Livingston  
 2 MR. PEARSON: Objection.  
 3 A. I performed --  
 4 Q. It's a yes or no question, Ms.  
 5 Livingston.  
 6 MR. PEARSON: Objection.  
 7 A. I performed most of my mystery shops  
 8 in person, but I also did non-in-person mystery  
 9 shops.  
 10 Q. Okay. Well, this document reflects  
 11 when they were -- when they were telephonic and  
 12 when they were at tellers, and on this page,  
 13 particular page we're looking at, there isn't a  
 14 single telephonic mystery shop, right?  
 15 A. Did -- did you want an answer to that?  
 16 MR. PEARSON: You can review it.  
 17 A. Looking on this page, I don't see a  
 18 telephone shop.  
 19 Q. Okay. So you had to leave the  
 20 courthouse, drive to the bank, perform the  
 21 mystery shop, and then presumably go to wherever  
 22 you were going from there, right?  
 23 A. I would go on for where --  
 24 I'm sorry?  
 25 Q. You couldn't -- if you were mystery

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1 I. Livingston  
2 A. Yes, I do.  
3 Q. On the Contemporary Staffing Solutions  
4 spreadsheet on page 3996, it indicates that you  
5 mystery shopped with the South Flushing TD Bank  
6 branch by telephone at 1:50 P.M. Do you see  
7 that?  
8 A. On May 13?  
9 Q. May 14.  
10 A. May 14? Yes, I see that.  
11 Q. Ms. Livingston, it is the case that on  
12 days that you were working for The Post, it was  
13 not always on your lunch hour or even at  
14 lunchtime that you went mystery shopping; isn't  
15 that correct?  
16 MR. PEARSON: Objection.  
17 A. I can take my lunch whenever I like.  
18 Q. Can you take your lunch at 10:30 in  
19 the morning?  
20 A. Actually, I can.  
21 Q. So if you mystery shopped at 10:30 in  
22 the morning on a -- on a New York Post workday,  
23 it's your testimony that that was your lunch  
24 break?  
25 A. If that's what time I took it, yeah,

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1 I. Livingston  
2 driving between shop locations, then I could  
3 easily be on the phone or calling someone or  
4 reaching out doing my job as a Queens court  
5 reporter.  
6 So mystery shops would take two  
7 minutes, five minutes, you know, but in between  
8 there, I was always doing my job.  
9 Q. You don't have any specific  
10 recollection of phone calls that you made during  
11 drives in between TD Banks, do you?  
12 A. I don't have any specific recollection  
13 of -- of specific phone calls with specific  
14 people, but I know that my job -- my priority  
15 was always my job as a reporter for The New York  
16 Post. So if I was -- if I needed to talk to  
17 someone at the DA's Office, that's what I would  
18 do.  
19 Q. And if you were out of the courthouse  
20 doing mystery shop and someone came to your desk  
21 in the courthouse to come and talk to you, they  
22 wouldn't be able to speak to you because you  
23 would be out mystery shopping, right?  
24 MR. PEARSON: Objection.  
25 Q. That's a yes or no question.

1 I. Livingston  
2 that can be my lunch break, yes.  
3 Q. So anytime -- essentially, anytime you  
4 mystery shopped on a day you were working for  
5 The Post was your lunch break?  
6 MR. PEARSON: Objection.  
7 Q. Is that your testimony?  
8 A. When I would take my lunch, I could  
9 take my lunch at any time. I didn't know that  
10 we had -- or I was never told that we needed to  
11 take our lunch at a specific time, but if time  
12 permitted --  
13 Q. Can you turn in the spreadsheet --  
14 A. I'm sorry. I -- I was still talking.  
15 Q. Oh, I'm sorry.  
16 A. I was just saying if time permitted  
17 and that was a convenient time for me to take my  
18 lunch, and I could do a mystery shop, if that's  
19 what I chose to do, then -- then I would do it,  
20 but my priority was always doing my job.  
21 Q. And was -- was it -- was it the case  
22 that mystery shops were on your lunch break even  
23 when they happened one after another on the same  
24 day and spanned a period of 90 minutes?  
25 A. Well, it would depend. If I was

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1 I. Livingston  
2 A. If I am not in the Queens courthouse  
3 office, New York Post office, then obviously if  
4 someone did walk in there, I wouldn't have been  
5 there for them to see me, but --  
6 Q. And that would include lawyers, court  
7 personnel, or other sources that would not be  
8 able to find you if they wanted to speak to you  
9 while you were out mystery shopping, right?  
10 MR. PEARSON: Objection.  
11 A. While I was out mystery shopping, it  
12 did not impede my job as a reporter for The New  
13 York Post.  
14 Q. Well, if somebody -- how would you  
15 even know if someone had come to find you and  
16 knocked on the door of your office and left  
17 because you weren't there? You wouldn't even  
18 know that, would you?  
19 A. If someone wanted to reach me and I  
20 wasn't there, then they're -- they would have  
21 reached out to me and I would -- I would have  
22 found out and I would have been able to talk to  
23 them, if that was the case.  
24 Q. But you're speculating about that,  
25 right?

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1 I. Livingston  
 2 MR. PEARSON: Objection.  
 3 A. I don't know if -- if that ever  
 4 happened. If it did happen, then -- then  
 5 obviously I wasn't -- my job did not pertain to  
 6 me being in that office throughout the entire --  
 7 all the hours that I worked. Sometimes I did  
 8 work for The Post and I wasn't in the Queens  
 9 courthouse, in that office or even in the  
 10 building.  
 11 So that could happen at any time.  
 12 Q. And you actually -- you wouldn't know  
 13 if it happened because you weren't there to  
 14 receive the person, right?  
 15 A. If I wasn't there, obviously I could  
 16 not have spoken to that person.  
 17 Q. And -- and if the phone rang at your  
 18 desk in the courthouse, you wouldn't be there to  
 19 pick it up, right?  
 20 A. No, I would not be there to pick it  
 21 up, but there is voice mail on the machine. But  
 22 a lot of times people contacted me via my cell  
 23 phone.  
 24 Q. And could you access that voice mail  
 25 from your cell phone?

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1 I. Livingston  
 2 someone wanted to give me a story -- first of  
 3 all, if someone wanted to give me a story and  
 4 they walked into the -- the office there, we  
 5 couldn't talk there because of the -- the fact  
 6 that the Daily News may or may not have been  
 7 present. So I --  
 8 Q. Wasn't it --  
 9 A. I don't believe that ever happened.  
 10 Q. Wasn't it your job to be a good  
 11 reporter from 9 to 5, Monday through Friday, at  
 12 the Queens courthouse?  
 13 A. My job --  
 14 MR. PEARSON: Objection.  
 15 A. -- was to be a good reporter.  
 16 I'm sorry.  
 17 My job was to be a good reporter, not  
 18 just between 9 to 5, but my job didn't just  
 19 encompass being a reporter between 9 and 5.  
 20 Sometimes I worked before 9. Sometimes I worked  
 21 after 9. Sometimes well after 9. Sometimes in  
 22 the middle of the night.  
 23 Q. Were you being a good reporter when  
 24 you were inside a TD Bank talking to a customer  
 25 service representative and getting paid to do

1 I. Livingston  
 2 A. Yes.  
 3 Q. Your office at the Queens courthouse  
 4 was shared with reporters from other newspapers,  
 5 correct?  
 6 A. That's correct.  
 7 Q. So there was a desk in that office for  
 8 the Daily News reporter, right?  
 9 A. Yes.  
 10 Q. And there was a desk in that office  
 11 for the Newsday reporter?  
 12 A. Yes.  
 13 Q. And do you know if anybody ever came  
 14 to the office to give you information or give  
 15 you a scoop on a story and, in your absence,  
 16 they decided to give it to the Daily News or the  
 17 Newsday reporter?  
 18 A. I don't believe that ever happened.  
 19 Q. How -- how -- what's the basis of your  
 20 belief that that never happened?  
 21 A. Because I was a good -- I am a good  
 22 reporter. I was a very good reporter at the  
 23 Queens courthouse, and I pretty much knew  
 24 everyone in the court -- in the courts, from the  
 25 court officers to the court clerks, and if

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1 I. Livingston  
 2 mystery shopping?  
 3 MR. PEARSON: Objection.  
 4 A. Are you asking if I was a good  
 5 reporter when I was in TD Bank?  
 6 Q. I'm asking if you were being a good  
 7 reporter when you were mystery shopping at TD  
 8 Bank?  
 9 MR. PEARSON: Objection.  
 10 Q. Yes or no?  
 11 A. I was still being a good reporter, of  
 12 course, yes.  
 13 Q. Were you -- and were you being a good  
 14 reporter when you left the courthouse while  
 15 court was in session during the hours of 9 to 5  
 16 and you were not there in the courtroom to watch  
 17 the proceedings?  
 18 MR. PEARSON: Objection. Foundation.  
 19 A. I think you're assuming that there was  
 20 something going on in the courtroom -- in the  
 21 courthouse or in a courtroom that I needed to be  
 22 there for, and if I needed to be there, I was  
 23 there; I wasn't out mystery shopping. I didn't  
 24 mystery shop during times that was pertinent to  
 25 my job.



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1 I. Livingston  
 2 A. If I'm not in the court building, then  
 3 I am not meeting with those people, but that  
 4 does not mean I am not talking to people that I  
 5 still need to be talking to.  
 6 Q. But you can't testify here with any  
 7 specific recollection that you spoke to a source  
 8 when you were traveling to mystery shop, right?  
 9 A. I can't recall on any particular day.  
 10 This was years ago.  
 11 Q. Thank you.  
 12 And when you were traveling to go  
 13 mystery shopping at a TD Bank location in  
 14 Queens, you weren't at the civil courthouse  
 15 either, right?  
 16 A. If I was at a -- a bank, then, no, I  
 17 wasn't at the Sutphin courthouse, no.  
 18 Q. Ms. Livingston, I'm going to show you  
 19 what has been marked as Exhibit 22 -- sorry, 23.  
 20 (Livingston Exhibit 23, Shop History  
 21 of Ikimulisa Livingston, bearing Bates Nos.  
 22 NYP-FL003980 through 3986, marked for  
 23 identification, as of this date.)  
 24 BY MR. LERNER:  
 25 Q. Ms. Livingston, Exhibit 23 is a copy

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1 I. Livingston  
 2 Q. Okay. Let me show you -- we're going  
 3 to mark a document Bates-numbered NYP-FL328  
 4 through 331 as Exhibit 24.  
 5 (Livingston Exhibit 24, Self-Appraisal  
 6 for Ikimulisa Livingston, bearing Bates Nos.  
 7 NYP-FL000328 through 331, marked for  
 8 identification, as of this date.)  
 9 BY MR. LERNER:  
 10 Q. This is your 2008 Performance  
 11 Evaluation, do you see that?  
 12 A. I do see it.  
 13 Q. And you got a rating of Occasionally  
 14 Meets Standards in this performance evaluation,  
 15 right? You see that?  
 16 A. I see that.  
 17 Q. And in the overall performance  
 18 summary, you were told that you did a great job  
 19 providing day-to-day notes for the Sean Bell  
 20 trial, but you needed work developing sources  
 21 that would provide stories for the paper that  
 22 are longer than briefs and have a better  
 23 disposition when your stories get cut.  
 24 Do you see that?  
 25 A. I do see that.

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1 I. Livingston  
 2 of Exhibit -- is a copy of Exhibit 18, the TD  
 3 Bank spreadsheet, with one difference, which is  
 4 that we've highlighted in yellow those mystery  
 5 shops that occurred on days when you were  
 6 working for The New York Post, according to your  
 7 time sheets. Do you understand that?  
 8 A. Yes.  
 9 Q. Okay. Can you just take a minute to  
 10 turn the pages of Exhibit 23. Do you see how  
 11 we've highlighted certain mystery shops?  
 12 A. Yes, I see. I see the highlights.  
 13 Q. Do you have any reason to dispute that  
 14 you mystery shopped on this -- you had --  
 15 withdrawn.  
 16 The highlighted mystery shops number  
 17 roughly a hundred or more in 2008 alone, do you  
 18 see that?  
 19 A. I haven't counted them, but if you say  
 20 so.  
 21 Q. But you don't dispute that it's --  
 22 it's a significant number of mystery shops,  
 23 right?  
 24 A. I'm sorry, I don't -- I don't know  
 25 what that means.

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1 I. Livingston  
 2 Q. I'm going to mark your -- okay. I'm  
 3 also placing before you what has been previously  
 4 marked as Exhibit 10 to your deposition, and if  
 5 you could turn to page 334 of this exhibit,  
 6 which is your 2009 APA, it states under Areas  
 7 For Focus: "Kim rarely suggests story ideas and  
 8 must do a better job at this. The key to a good  
 9 newspaper and Website is variety. In addition,  
 10 Monday enterprise is very important and Kim  
 11 never pitches or develops her own stories.  
 12 "Overall Performance Summary: Kim  
 13 needs to be more diligent about generating her  
 14 own story ideas, slice of life pieces,  
 15 investigations. This is a rapidly changing news  
 16 culture and Kim has to keep up with it." And  
 17 your rating was 2, "Needs Improvement."  
 18 Do you see that?  
 19 A. I see it.  
 20 Q. So your supervisors in 2009 criticized  
 21 you for not generating your own story ideas or  
 22 slice of life pieces or investigations or  
 23 pitching or developing your own stories,  
 24 correct?  
 25 A. That's what's written here.



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1 I. Livingston  
 2 Q. And your supervisors when they wrote  
 3 this in 2009 had not been told by you that you  
 4 were engaged in a mystery shopping, right?  
 5 A. Had I told them I was mystery  
 6 shopping? No.  
 7 Q. So you're receiving criticisms in --  
 8 in '08 and '09 that you need to develop sources  
 9 and provide more in-depth stories and you needed  
 10 to generate more of your own story ideas at a  
 11 time when, during the day on multiple occasions,  
 12 you've been leaving the courthouse to do mystery  
 13 shopping, correct?  
 14 A. I'm sorry, are you referring to 2009  
 15 or 2008?  
 16 Q. 2008 and 2009.  
 17 A. Well, 2009 I -- I wasn't in the  
 18 courthouse.  
 19 Q. Okay. But your 2009 APA covered the  
 20 last six months of 2008 when you were still in  
 21 the courthouse, correct?  
 22 A. I believe, yeah, it may -- yeah, it  
 23 covered part of that, yes.  
 24 Q. So, Ms. Livingston, when you received  
 25 this criticism, did you -- did you discontinue

1 I. Livingston  
 2 your mystery shopping?  
 3 A. Are you asking if I continued mystery  
 4 shopping after receiving these evaluations?  
 5 Q. Yes.  
 6 A. Yes, I continued mystery shopping.  
 7 Q. And you continued that even though  
 8 your supervisors were pressing you to do more  
 9 investigations and develop more of your own  
 10 story ideas and your own sources, right?  
 11 A. Throughout my time at the Queens  
 12 courthouse, and even afterwards, I gave them  
 13 story ideas as well as -- actually, yeah, I gave  
 14 them a lot of story ideas, and none of them were  
 15 good enough for the editors.  
 16 Q. And if you look at Exhibit 23, which  
 17 is the highlighted document?  
 18 A. Yes.  
 19 Q. You will see that on days throughout  
 20 2008, you were going mystery shopping during the  
 21 afternoon hours, sometimes at more than one bank  
 22 on a given day; that's correct, isn't it?  
 23 A. I haven't gone through the entire  
 24 list, but I did do mystery shops during my  
 25 downtime or during lunchtime.

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1 I. Livingston  
 2 Q. You did mystery shops during the day  
 3 between 9 and 5 when you were working at The  
 4 Post, right?  
 5 A. As I said, my job just wasn't 9 to 5,  
 6 but I did do mystery shops between 9 -- 9 and 5.  
 7 Q. And it never occurred to you to stop  
 8 doing the mystery shopping and focus your energy  
 9 instead on developing sources and developing  
 10 investigative pieces in the courthouse?  
 11 MR. PEARSON: Objection.  
 12 A. One had nothing to do with the other.  
 13 I continued to mystery shop, but I was also very  
 14 dedicated to my job. Mystery shopping was  
 15 basically -- my priority was my job.  
 16 Q. And you used the term "downtime," Ms.  
 17 Livingston. How would you define "downtime"  
 18 between the hours of 9 and 5 when you're working  
 19 as a reporter for The New York Post?  
 20 A. I would describe downtime as when it's  
 21 a slow day.  
 22 Q. Isn't that the time that you're  
 23 supposed to be working on your own investigative  
 24 ideas, developing sources, and trying to further  
 25 stories?

1 I. Livingston  
 2 A. And I do that.  
 3 Q. Well, you didn't do it when you were  
 4 mystery shopping at TD Bank --  
 5 A. I'm sorry, I --  
 6 Q. -- or for Shop 'n Chek, correct?  
 7 A. -- disagree --  
 8 MR. PEARSON: Objection.  
 9 A. I disagree with you. I did do that.  
 10 Q. You did -- your testimony is that  
 11 while you're mystery shopping at TD Bank or at  
 12 Shop 'n Chek, you're also working for The New  
 13 York Post developing story ideas and developing  
 14 sources; is that correct?  
 15 MR. PEARSON: Objection.  
 16 A. As I stated, my priority was my job at  
 17 The New York Post.  
 18 Q. How many stories did you develop at TD  
 19 Bank? Name one.  
 20 A. How many stories did I develop at TD  
 21 Bank?  
 22 Q. While you were mystery shopping at TD  
 23 Bank?  
 24 A. I don't know.  
 25 Q. How many stories did you develop while

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1 I. Livingston  
 2 you were mystery shopping at Office Depot?  
 3 A. I don't know. I don't recall.  
 4 Q. How many sources did you develop by  
 5 mystery shopping at TD Bank?  
 6 A. Oh, I don't know.  
 7 Q. Did a lawyer ever accompany you in the  
 8 car to mystery shop at TD Bank?  
 9 A. No.  
 10 Q. How many civil filings did you go  
 11 through while you were mystery shopping at TD  
 12 Bank?  
 13 A. I -- I don't know.  
 14 Q. How many trials or arraignments or  
 15 sentencings did you attend while you were  
 16 mystery shopping at TD Bank?  
 17 A. If I am at TD Bank, I am -- obviously  
 18 I'm not in another place at the same time.  
 19 Q. So that's none, right?  
 20 MR. PEARSON: Objection.  
 21 A. If there was an arraignment I needed  
 22 to attend, I was at the arraignment. If there  
 23 was a court proceeding I needed to be at, I was  
 24 at the court proceeding. If there were  
 25 witnesses to something for a story that was of

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1 I. Livingston  
 2 the courthouse?  
 3 A. I'm sorry, I would like to -- I was  
 4 saying --  
 5 Q. The question was how would you know if  
 6 you needed to be in an arraignment part? That  
 7 was the question.  
 8 A. And I stated that my contacts would  
 9 let me know if there was a newsworthy story  
 10 going on in the arraignments. My job was not  
 11 sitting in arraignments all day watching various  
 12 arraignments happen.  
 13 Q. And isn't it the case that sometimes  
 14 your contacts wouldn't know or wouldn't advise  
 15 you that there was an important arraignment that  
 16 was going to happen in the courtroom?  
 17 A. I -- I didn't miss any arraignments  
 18 because of mystery shopping.  
 19 Q. Did you ever miss sentencings?  
 20 A. No.  
 21 Q. Did you ever miss a sentencing?  
 22 A. I'm sorry, did I ever miss a  
 23 sentencing?  
 24 Q. Yes.  
 25 A. Any sentencing?

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1 I. Livingston  
 2 interest to The New York Post, I was  
 3 interviewing those witnesses. If there was a  
 4 lawyer I needed to speak to regarding a case, I  
 5 was speaking to that lawyer.  
 6 Q. Ms. Livingston, there was no question  
 7 pending so I'm going to move to strike that.  
 8 MR. PEARSON: Objection to the strike.  
 9 Q. How would you know --  
 10 MR. PEARSON: There was a question.  
 11 Q. How would you know if there was an  
 12 arraignment in an arraignment part that you  
 13 needed to attend in advance?  
 14 A. How would I know?  
 15 Q. Yes.  
 16 A. If there was a breaking story or a --  
 17 a story about -- a newsworthy story going on in  
 18 arraignments, then I would know about it because  
 19 of my contacts within the courthouse.  
 20 During the course of --  
 21 Q. Would --  
 22 A. I'm sorry.  
 23 Q. You know about it --  
 24 A. I'm sorry, I --  
 25 Q. -- in advance before you even got to

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1 I. Livingston  
 2 Q. Yes, because of mystery shopping?  
 3 A. No.  
 4 Q. Did you ever get scooped by the Daily  
 5 News while you were working at the courthouse?  
 6 A. Did I ever get scooped? Did I have a  
 7 story that the Daily News did not have?  
 8 Q. Uh-huh. Yes.  
 9 A. That happened, but it also happened in  
 10 the reverse. I also had stories that the Daily  
 11 News did not have.  
 12 Q. Is that because Nicole Bode at the  
 13 Daily News was mystery shopping?  
 14 A. I don't know if --  
 15 MR. PEARSON: Objection.  
 16 A. I don't know if Nicole was mystery  
 17 shopping or not.  
 18 Q. Did you ever bump into her during  
 19 mystery shopping?  
 20 A. Did I bump into Nicole at TD Bank?  
 21 Q. Yes.  
 22 A. No.  
 23 Q. So if -- if Nicole Bode got scooped,  
 24 it wasn't because, to your knowledge, it wasn't  
 25 because she was out mystery shopping, right?

<p style="text-align: right;">Page 438</p> <p>1 I. Livingston</p> <p>2 MR. PEARSON: Objection.</p> <p>3 A. If Nicole Bode got scooped on</p> <p>4 something, it was because I was a hard-working</p> <p>5 reporter and got the story before she did.</p> <p>6 Q. Did you have any arrangement with</p> <p>7 Nicole Bode to cover matters in the courthouse?</p> <p>8 A. I'm sorry, I don't understand what you</p> <p>9 mean by "arrangement."</p> <p>10 Q. Did you have any agreement with Nicole</p> <p>11 Bode that you would exchange information</p> <p>12 regarding matters going on in the courthouse?</p> <p>13 A. There -- there were times when we</p> <p>14 would both buy a transcript. Other than that,</p> <p>15 no.</p> <p>16 Q. If the criminal courthouse didn't have</p> <p>17 any matters in the courtrooms that you felt you</p> <p>18 needed to attend, why didn't you head over to</p> <p>19 the civil courthouse and go through civil</p> <p>20 filings and look for cases there?</p> <p>21 A. I did.</p> <p>22 Q. Well, you didn't do that when you were</p> <p>23 mystery shopping at TD Bank, right?</p> <p>24 MR. PEARSON: Objection.</p> <p>25 A. When there was nothing necessarily</p>	<p style="text-align: right;">Page 439</p> <p>1 I. Livingston</p> <p>2 going on in the courthouse, in the criminal</p> <p>3 courthouse that was of interest to The Post, I</p> <p>4 would go to the Sutphin courthouse and go</p> <p>5 through filings.</p> <p>6 Q. Well.</p> <p>7 A. I did do that.</p> <p>8 Q. To be correct, you would -- you</p> <p>9 testified earlier that you would go sometimes</p> <p>10 less than once a week, right?</p> <p>11 A. No, I don't think I said that.</p> <p>12 MR. PEARSON: Objection.</p> <p>13 Q. Oh, well, the record will reflect what</p> <p>14 you said.</p> <p>15 Ms. Livingston, do you know how many</p> <p>16 stories you filed and got a byline for in 2008</p> <p>17 that related to civil cases in Queens?</p> <p>18 A. No, I don't know how many.</p> <p>19 Q. How many -- do you have an estimate as</p> <p>20 to how many?</p> <p>21 A. I also -- no, I don't have an</p> <p>22 estimate, but I also don't know the number of</p> <p>23 stories that I offered to The New York Post that</p> <p>24 were also filings that were denied.</p> <p>25 Q. Well, your job was to present the</p>
<p style="text-align: right;">Page 440</p> <p>1 I. Livingston</p> <p>2 editors of The Post with stories that the</p> <p>3 newspaper would see fit to publish, correct?</p> <p>4 A. Yes, I would present stories that were</p> <p>5 going on, stories about lawsuit filings that had</p> <p>6 been filed at the New York -- at the -- in</p> <p>7 Queens. So if there wasn't anything of</p> <p>8 particular interest to The Post -- I presented</p> <p>9 everything that was of interest.</p> <p>10 Q. How many -- I'm going to ask you</p> <p>11 again. Do you have any idea how many stories</p> <p>12 you got bylines for in 2008 that originated</p> <p>13 relating to civil cases?</p> <p>14 A. I thought I answered that question.</p> <p>15 Q. You don't remember?</p> <p>16 A. I believe that's what I said.</p> <p>17 Q. What do you think would be a -- what</p> <p>18 do you think would be an approximate number?</p> <p>19 A. I do not know.</p> <p>20 Q. Do you think you had a byline once a</p> <p>21 month in a civil case in 2008 or more or less</p> <p>22 than that?</p> <p>23 A. I do not know.</p> <p>24 Q. When you went to the civil courthouse</p> <p>25 to look at filings, how much time would you</p>	<p style="text-align: right;">Page 441</p> <p>1 I. Livingston</p> <p>2 spend looking at the filings in 2008?</p> <p>3 A. It depended. I don't know.</p> <p>4 Q. What's the range? What's the short</p> <p>5 end to the long end?</p> <p>6 A. It depended on how much time I had</p> <p>7 away from the Queens court, from the criminal</p> <p>8 court.</p> <p>9 Q. So from what to what?</p> <p>10 A. I'm sorry?</p> <p>11 Q. What was the range of time that you</p> <p>12 might spend -- that you would spend in 2008</p> <p>13 looking at civil filings?</p> <p>14 A. I don't know. It depends.</p> <p>15 Q. Was it more than an hour?</p> <p>16 A. I think sometimes it was more than an</p> <p>17 hour. Sometimes it was less than an hour.</p> <p>18 Q. You complained that Zach Haberman</p> <p>19 spoke to you harshly sometimes about -- when he</p> <p>20 was your editor, correct?</p> <p>21 A. I complained that he was a</p> <p>22 demoralizing, demeaning, and screamed and cursed</p> <p>23 at me.</p> <p>24 Q. And those conversations were related</p> <p>25 to your work as a reporter, correct?</p>

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1 I. Livingston  
 2 MR. PEARSON: Objection.  
 3 Q. They weren't personal conversations,  
 4 they were work conversations, right?  
 5 A. They were conversations -- I wouldn't  
 6 have a conversation with Zach unless I was -- it  
 7 was related to work.  
 8 Q. Did you ever tell Zach during any of  
 9 those conversations that you had a job that  
 10 required you to leave the courthouse during the  
 11 regular workday?  
 12 A. I didn't have a job.  
 13 MR. PEARSON: Objection.  
 14 Q. Did you ever tell Zach Haberman that  
 15 you had a job doing mystery shopping that  
 16 required you to leave the courthouse during the  
 17 day?  
 18 A. I did not have another job, but I  
 19 didn't tell Zach that I mystery shopped, no.  
 20 Q. You did not tell Mr. Haberman that you  
 21 did mystery shopping, correct?  
 22 A. I think I answered that.  
 23 Q. So --  
 24 A. Yes.  
 25 Q. So -- and you didn't tell him even

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1 I. Livingston  
 2 MR. PEARSON: Objection.  
 3 A. No.  
 4 Q. Well, you --  
 5 A. That's not why I didn't tell them.  
 6 Q. You kept it a secret for five years  
 7 while you were mystery shopping, right?  
 8 MR. PEARSON: Objection.  
 9 A. I -- I didn't tell my -- my bosses at  
 10 The Post, no, but it wasn't a secret.  
 11 Q. You didn't tell them because you  
 12 didn't think that they would approve mystery  
 13 shopping during the day, right?  
 14 A. I didn't think they would --  
 15 MR. PEARSON: Objection. Asked and  
 16 answered.  
 17 Q. Did you think that they would approve  
 18 your mystery shopping multiple times during a  
 19 The New York Post workday if you had asked them  
 20 for permission?  
 21 A. I did not not tell them because I  
 22 thought they would approve or disapprove.  
 23 Q. So why did you not tell them?  
 24 A. Why did I not tell them?  
 25 Q. That's the question.

1 I. Livingston  
 2 though he got upset with you on the phone from  
 3 time to time, right?  
 4 A. I don't understand what one has to do  
 5 with the other.  
 6 Q. Well, if he was complaining to you  
 7 about the amount of sources you had or the  
 8 effort you were putting in or whether or not you  
 9 had gotten a story, and you were outside the  
 10 courthouse on that day doing mystery shopping,  
 11 did you ever offer that up as an explanation for  
 12 why you had not lived up to his expectations?  
 13 MR. PEARSON: Objection.  
 14 A. Our conversations were not about those  
 15 things that you described.  
 16 Q. You never told him that you were  
 17 mystery shopping, correct?  
 18 A. I think I have stated twice that I  
 19 have -- I did not tell him that I mystery  
 20 shopped.  
 21 Q. And you didn't tell Mr. Haberman or  
 22 your other editors, for that matter, that you  
 23 were mystery shopping because you didn't think  
 24 that they would approve of mystery shopping,  
 25 right?

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1 I. Livingston  
 2 A. It wasn't pertinent to The New York  
 3 Post.  
 4 Q. Even though you left the courthouse  
 5 where your job duty station was to go do mystery  
 6 shopping during the days you worked for The  
 7 Post, you didn't think that it was pertinent to  
 8 your job at The New York Post?  
 9 A. As I stated, my job was not just  
 10 necessarily at the Queens courthouse. I worked  
 11 outside of the Queens courthouse doing my job.  
 12 During hours that were outside of 9 to 5, it did  
 13 not seem relevant to me, no.  
 14 Q. So your explanation is that because  
 15 some of your duties as a Queens court reporter  
 16 could be done outside the courthouse, that doing  
 17 mystery shopping outside the courthouse, which  
 18 is not a New York Post duty, was consistent with  
 19 your job for The New York Post?  
 20 MR. PEARSON: Objection.  
 21 A. My explanation is that my mystery  
 22 shopping was not -- I'll rephrase that. My job  
 23 priority, as I stated before, was working for  
 24 The New York Post, was being a reporter for The  
 25 New York Post and covering everything that I



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1 I. Livingston  
 2 needed to cover. Mystery shopping didn't relate  
 3 to that because it was not a priority. My job  
 4 at The Post was my priority.  
 5 Q. Ms. Livingston, what, besides mystery  
 6 shopping, what else did you leave the Queens  
 7 courthouse to do during the day?  
 8 A. I would go and interview people for  
 9 Sunday for Monday stories.  
 10 Q. You know what, let me ask the question  
 11 differently because I think I mis-asked it. If  
 12 you were willing to leave the courthouse during  
 13 the day to go mystery shopping, what other  
 14 non-New York Post-related errands were you --  
 15 were you leaving the New York -- leaving the  
 16 Queens courthouse during the day to do?  
 17 MR. PEARSON: Objection.  
 18 A. You're asking me if I was leaving the  
 19 courthouse to do other things?  
 20 Q. Yes. Exactly.  
 21 A. Well, like I was saying, I would go  
 22 and interview people for Sunday for Monday  
 23 stories.  
 24 Q. No, my question is what non-New York  
 25 Post things would you leave the courthouse to do

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1 I. Livingston  
 2 courthouse during the day when you were working  
 3 for The Post to spend time with your son during  
 4 The Post workday?  
 5 A. I don't believe so.  
 6 Q. And would it have been appropriate for  
 7 you to leave the courthouse during the day to  
 8 meet with friends or go shopping for yourself or  
 9 meet with your son while you were working for  
 10 The Post at the Queens courthouse?  
 11 A. I don't -- I don't believe I did those  
 12 things.  
 13 Q. But you did leave to go mystery  
 14 shopping, right?  
 15 A. During my --  
 16 Q. Yes or no?  
 17 A. During my lunchtime, I would go and --  
 18 and mystery shop.  
 19 Q. And during your downtime, right?  
 20 A. For the most part, it was during my  
 21 lunch hour.  
 22 Q. You mean during your 30-minute lunch  
 23 hour?  
 24 A. During my break.  
 25 Q. Your break, which sometimes ran 90

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1 I. Livingston  
 2 besides mystery shopping?  
 3 A. Oh. Maybe I would go and get  
 4 something to eat.  
 5 Q. Okay. Well, that's lunch, right?  
 6 You're entitled to a half an hour for lunch,  
 7 correct?  
 8 A. I believe that I am entitled to have  
 9 lunchtime, to have, yeah, break for lunch.  
 10 Q. Right. My question is did you -- did  
 11 you leave the courthouse during the day to meet  
 12 friends when you were working at the Queens  
 13 courthouse?  
 14 A. I don't recall that, no.  
 15 Q. Did you leave the courthouse to go  
 16 shopping during the day when you were working at  
 17 the Queens courthouse?  
 18 A. There might have been an occasion when  
 19 I would go and pick up supplies for the -- for  
 20 the office.  
 21 Q. Did you ever leave the courthouse to  
 22 do personal shopping during the day when you  
 23 were working at the Queens courthouse?  
 24 A. I don't recall doing that.  
 25 Q. Did you -- did you ever go leave the

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1 I. Livingston  
 2 minutes or more, correct?  
 3 MR. PEARSON: Objection.  
 4 A. Like I said, during the times that I  
 5 would drive somewhere, I wasn't necessarily just  
 6 strictly driving somewhere. I was also reaching  
 7 out to people in the Queens DA's Office or to  
 8 sources or to lawyers.  
 9 MR. LERNER: Let's go off the record  
 10 for a minute. We'll take a short break and  
 11 then come back and finish up.  
 12 THE VIDEOGRAPHER: The time is 12:48.  
 13 We're going off the record.  
 14 (Recess.)  
 15 THE VIDEOGRAPHER: The time is 1:07.  
 16 We're back on the record.  
 17 BY MR. LERNER:  
 18 Q. Ms. Livingston, did you ever have a  
 19 conversation with Mr. Greenfield or Mr. Gotthelf  
 20 about the idea of downtime that you have  
 21 referred to earlier today?  
 22 A. Excuse me. I think that --  
 23 Q. It's a yes or no question, Ms.  
 24 Livingston.  
 25 A. Yes.



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1 I. Livingston  
 2 Q. Yes? The answer is yes?  
 3 A. Yes.  
 4 Q. All right. What was that  
 5 conversation?  
 6 A. During one of the APA evaluations, I  
 7 think Michelle actually said that during --  
 8 during time when things are slow, that I  
 9 should -- and Greenfield maybe as well -- that I  
 10 should comb the Internet looking for stories, go  
 11 to various Websites. Michelle specifically said  
 12 I should go out and cruise neighborhoods looking  
 13 for neighborhood stories, that sort of thing.  
 14 Q. And what about Zach Haberman, did you  
 15 ever have that conversation with him?  
 16 A. I don't recall having a specific  
 17 conversation with him.  
 18 Q. And did you ever have a conversation  
 19 with a supervisor about downtime while you were  
 20 working in the Queens courthouse?  
 21 A. I don't recall a specific  
 22 conversation.  
 23 Q. Did you ever tell Michelle or Dan or  
 24 Haberman that during your downtime you thought  
 25 you could go mystery shopping?

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1 I. Livingston  
 2 Q. My question was if you could be  
 3 meeting with a source or mystery shopping, which  
 4 should you be doing?  
 5 MR. PEARSON: Objection.  
 6 A. I thought I answered the question.  
 7 Q. So what is the answer?  
 8 A. I said that if -- if there was a  
 9 source, someone that I needed to meet with, then  
 10 I would meet with that person. I didn't need to  
 11 do a mystery shop.  
 12 Q. And if you could be meeting with an  
 13 assistant district attorney in the Queens  
 14 criminal court or go mystery shopping, which  
 15 should you choose to do?  
 16 MR. PEARSON: Objection.  
 17 A. If I had a meeting with an ADA, I  
 18 would have had a meeting with the -- with the  
 19 assistant district attorney rather than going  
 20 mystery shopping. As I said, my priority was my  
 21 job, and if there was --  
 22 Q. If you could be --  
 23 A. If there was a source that I needed to  
 24 meet with, I would meet with that person.  
 25 Q. And if you could be working to set up

1 I. Livingston  
 2 A. As I've stated before, I never told  
 3 them about my mystery shopping.  
 4 Q. When they told you about downtime  
 5 being to be used for looking for stories and  
 6 looking through the Internet, was that a  
 7 surprise to you or was that advice consistent  
 8 with your understanding of what your job was as  
 9 a reporter?  
 10 A. I understand that to be what you --  
 11 that you're -- you're basically always looking  
 12 for a story. Even if you're not working, you're  
 13 looking for stories.  
 14 Q. And that included when you were in the  
 15 Queens courthouse, right?  
 16 A. Yes.  
 17 Q. Ms. Livingston, you stated earlier  
 18 that The New York Post was your priority. If  
 19 you could be meeting with a source or going  
 20 mystery shopping, in your view, which should you  
 21 be doing?  
 22 A. If there was a source that I needed to  
 23 meet with, obviously I would meet with the  
 24 source. I, as I stated, I didn't -- I didn't  
 25 need to mystery shop.

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1 I. Livingston  
 2 a meeting with a source or an assistant district  
 3 attorney or a court officer on the one hand or  
 4 mystery shopping on the other hand, which should  
 5 you do as a New York Post Queens courthouse  
 6 reporter?  
 7 MR. PEARSON: Objection.  
 8 A. As I -- as I stated, that there are  
 9 many times that I would be on the phone reaching  
 10 out to someone and sometimes you had to wait  
 11 till people called you back.  
 12 Q. So would you agree that your priority  
 13 should be working to set up meetings with  
 14 sources in the courthouse over and above going  
 15 mystery shopping?  
 16 A. My priority was my job, was -- was  
 17 setting up meetings, was meeting with people.  
 18 Those were my priorities at all times.  
 19 Q. My question was: Should your priority  
 20 be working to set up meetings with sources or  
 21 should it be mystery shopping?  
 22 A. That was my priority.  
 23 Q. Setting up meetings to meet with  
 24 sources?  
 25 A. Certainly. Yes.

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1 I. Livingston  
 2 Q. But many times during the day you went  
 3 mystery shopping instead, correct?  
 4 A. I would go mystery shopping. Mystery  
 5 shopping would take two minutes, five minutes.  
 6 So, but yeah, in the -- in between that, if time  
 7 allowed, then I would take two minutes or five  
 8 minutes to do a mystery shop, but I would also  
 9 make phone calls and reach out to people and  
 10 make appointments and schedule meetings and all  
 11 those things to pursue stories.  
 12 Q. And if you could be reviewing civil  
 13 court filings in the Queens civil courthouse or  
 14 mystery shopping, which should you choose to do?  
 15 MR. PEARSON: Objection.  
 16 A. I would always -- I would go to the  
 17 Sutphin courthouse -- as a matter of fact, I  
 18 kept track of the files that I looked at so I  
 19 could continue from that point on to look at new  
 20 court filings. So that was my priority. That's  
 21 what I was doing.  
 22 Q. Well, if the choice was between  
 23 reviewing court filings in the civil courthouse  
 24 or going mystery shopping, which would you --  
 25 which is your priority?

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1 I. Livingston  
 2 mystery shop instead of doing your job for The  
 3 New York Post?  
 4 A. As I stated, my priority was always  
 5 doing my job at The New York Post.  
 6 Q. It's a yes or no question, Ms.  
 7 Livingston.  
 8 A. I'm sorry, then what was your  
 9 question?  
 10 Q. Is there ever a time when you should  
 11 mystery shop instead of doing your job for The  
 12 New York Post?  
 13 MR. PEARSON: Objection.  
 14 A. I wasn't not doing my job for The New  
 15 York Post.  
 16 Q. That is not the question. The  
 17 question is, is there ever a time when you  
 18 should mystery shop instead of doing your job  
 19 for The Post?  
 20 MR. PEARSON: Objection.  
 21 A. I was doing my job.  
 22 Q. Again, that's not the question. Is  
 23 there ever a time when you should mystery shop  
 24 instead of doing your job for The New York Post?  
 25 MR. PEARSON: Objection.

1 I. Livingston  
 2 A. I was -- I was going to the Sutphin  
 3 courthouse.  
 4 Q. However, you choose many, many times  
 5 to go mystery shopping in Queens in hours when  
 6 the Queens civil courthouse was open, correct?  
 7 A. Sometimes I would do a mystery shop in  
 8 between maybe on the way from or to, yes.  
 9 Q. And the Queens civil courthouse closed  
 10 at the end of the day, right, 5 o'clock? The  
 11 clerk's office?  
 12 A. Offhand, I'm not really sure what time  
 13 they closed.  
 14 Q. What time did TD Bank's branch close?  
 15 A. On some days, 8 o'clock.  
 16 Q. What time?  
 17 A. 8 P.M.  
 18 Q. 8 P.M.?  
 19 A. On some days.  
 20 Q. So you could do your -- what about  
 21 during the week?  
 22 A. I'm sorry?  
 23 Q. What about during the week?  
 24 A. Yeah, sometimes at 8 P.M.  
 25 Q. Is there ever a time when you should

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1 I. Livingston  
 2 Q. It's a yes or no question.  
 3 A. I was doing my job.  
 4 Q. Yes or no?  
 5 A. The way you're asking it, it --  
 6 it's -- I was doing my job at all times.  
 7 Q. Ms. Livingston, you are delaying this  
 8 deposition.  
 9 A. No, I'm not.  
 10 Q. The question is a yes or no question.  
 11 Is there ever a time when you should go mystery  
 12 shopping instead of doing your job for The New  
 13 York Post?  
 14 A. The mystery shops I did were  
 15 incidental breaks in a day.  
 16 Q. Yes or no?  
 17 A. Say it again, please.  
 18 Q. Is there ever a time when you should  
 19 do mystery shopping instead of doing your job  
 20 for The Post?  
 21 MR. PEARSON: Objection.  
 22 A. I think I answered the question. I  
 23 did my job.  
 24 Q. Again, the question is, is there ever  
 25 a time when you should do mystery shopping

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

 **ORIGINAL**

4 -----X  
5 AUSTIN FENNER and  
6 IKIMULISA LIVINGSTON,

7  
8 Plaintiffs,

9 v.

09 Civ. 9832

10 (BSJ) (RLE)

11 NEWS CORPORATION, NYP HOLDINGS,  
12 INC. d/b/a THE NEW YORK POST  
13 and DAN GREENFIELD and  
14 MICHELLE GOTTHELF,

15 Defendants.  
16 -----X

17  
18 DEPOSITION OF IKIMULISA LIVINGSTON

19 New York, New York

20 May 6, 2013  
21

22 Reported by:

23 MARY F. BOWMAN, RPR, CRR

24 JOB NO. 61106  
25

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IKIMULISA LIVINGSTON,

called as a witness by the defendants,  
having been duly sworn, testified as  
follows:

EXAMINATION BY

MR. LERNER:

Q. Ms. Livingston, did you have a  
meeting at the New York Post offices in  
February of 2013 in which you found out that  
your employment was being terminated?

A. Yes.

Q. How did you learn about that  
meeting?

A. How did I learn about the meeting?

Q. That a meeting would be held?

A. I received an e-mail from Amy  
Scialdone the day before. Well, I received  
the e-mail after, after work hours the day  
before.

Q. Did the e-mail tell you what the  
meeting would be about?

A. The e-mail just said that I was to  
come to the HR -- Amy's office at 11 a.m. It  
did not say the subject of the meeting.

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Q. Did anybody tell you what the  
subject of the meeting would be before the  
meeting occurred?

A. No.

Q. Where was the meeting held?

A. I don't know the exact address.  
It's a building across the street. I'd  
say --

Q. Is it 1185 Avenue of the Americas?

A. I don't know the address of the  
building, but it is across the street from  
where the New York Post is.

Q. Was it in Amy Scialdone's office?

A. It was in an office there. I don't  
know, per se, if it was Amy's office, but it  
was an office there. I don't remember what  
floor it was.

Q. Was the office area where the  
meeting was held New York Post offices?

A. I don't know.

Q. Do you remember what floor the  
meeting was on?

A. No.

Q. Who was at the meeting?

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A. When I walked into the room, Jesse  
Angelo was seated in the corner and Amy  
Scialdone and myself.

Q. During the course of the meeting,  
did anybody else attend the meeting?

A. No.

Q. What -- how did the meeting begin?

A. I walked into the office, and Jesse  
Angelo was seated in the corner. He said,  
Nice to see you, and I sat down and then,  
Jesse Angelo proceeded to speak and say that  
he had a letter to read to me.

Q. Did he read that letter to you?

A. And then he proceeded to read the  
letter. Aloud.

Q. Is there anything else that you  
recall about the conversation in the room  
before he read the letter, other than what  
you have testified to?

A. I just recall him saying it was  
nice to see me, so -- and it was nice to --  
it just seems ironic, but that's about it.

Q. Did he give you the letter so that  
you could follow along as he read it?

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MR. PEARSON: Objection.

Q. I'll withdraw the question and ask  
it differently.

Do you recall if you had the letter  
in front of you while he was reading it?

A. Right now, I don't. I don't recall  
for certain. I don't know.

Q. Do you recall receiving a copy of  
the letter at that meeting?

A. I do. I did receive a copy of the  
letter, yes.

Q. Did you read it?

A. Did I read it during this meeting?

Q. Did you read it at all?

A. I read it at some point, yes.

Q. I am giving you Exhibit 25 of your  
deposition. Is this the letter that you  
received from Jesse Angelo at the meeting on  
February 26, 2013?

A. This looks like the letter that I  
received.

Q. Other than Mr. Angelo reading you  
the letter, was there any other discussion at  
that meeting regarding the reasons that your

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asked me something in relation to keeping the account open and I told her that -- I think I told her that I was terminated so I wanted to close my account. So she printed out -- asked me my account number and then she cut me a check for the sum of the money in the Fox Credit Union.

Q. Did Amy Scialdone do or say anything during the course of that meeting and after that you believe was offensive or retaliatory?

A. I don't believe she did anything that was offensive to me, although I believe the fact that I was fired was retaliatory act for the lawsuit that I filed.

Q. OK. So we will get to that in a second. But Amy didn't do anything at the time that you thought was at the meeting offensive or discriminatory?

MR. PEARSON: Objection.

A. I stated that she didn't do anything that offended me that I recall, but I believe the fact that I was fired was retaliatory.

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Q. OK. You mentioned that you noticed a gentleman that seemed to be with the two of you when you got up to the elevator on the third floor in the 1211 Avenue of the Americas building. Is that correct?

A. I don't remember what floor we exited from the elevator, but he was on the elevator with us.

Q. Whichever floor was -- whichever floor the credit union was on, right?

A. Whichever floor the credit union was on, I noticed him when he was on the elevator with us when he came down from whatever floor we were on, the building across the street, he came out of the elevator, he followed us as we walked across the street, got in the same elevator we did. And after we stepped out of the elevator, I asked Amy about the guy who is following us.

Q. OK. Do you know who he is?

A. No, I don't.

Q. Did you speak to him at all?

A. No, I did not.

Q. And when was the last time you saw

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him that day?

A. I don't recall seeing him anymore after I exited the building.

Q. Now, you stated earlier and you state in your third amended complaint that you believe that the termination of your employment was retaliatory. What do you believe that was in retaliation for?

A. I believe that I was discriminated against when I was demoted from my Queens courthouse beat, and I believe every, every day after that, I have been discriminated against, and I believe my termination, in essence, since the Post -- since my supervisor -- since my editor at the Post sat across from me during my deposition, I think it was January of last year, and heard everything that went on in that deposition, including questions and answers in relation to any mystery shopping I did, and then this is the reason a year later that I'm terminated, I believe this is all retaliatory, related to, related to the lawsuit.

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Q. Who is the editor you are referring to in your last answer?

A. The editor who sat across from me during my deposition?

Q. Yes.

A. That would have been, in January, that would have been Michelle Gotthelf.

Q. Was Jesse Angelo at your deposition?

A. No. Jesse Angelo was not at the January deposition or the deposition I just had in February.

Q. In fact, at the time, Jesse Angelo wasn't -- was running the daily, he wasn't actually involved in the New York Post, correct?

MR. PEARSON: Objection.

A. I don't know what Jesse Angelo's duties would have been during my deposition.

Q. So it is your testimony that your termination was in retaliation for what exactly?

MR. PEARSON: Objection.

A. I thought I answered that a moment

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1  
2 ago.

3 Q. Was it in retaliation for the  
4 filing of your lawsuit?

5 MR. PEARSON: Objection.

6 A. From the time I was demoted from my  
7 beat at Queens courthouse, I have been  
8 discriminated against by the New York Post by  
9 the editors there. I have been discriminated  
10 against since that time, and I believe this  
11 termination was as a result of the  
12 discrimination as well as retaliatory in  
13 regards to the lawsuit that was filed.

14 Q. And in what way have you been  
15 discriminated against at the New York Post  
16 since your deposition in January of 2012?

17 A. I am sorry, repeat that again.

18 Q. In what way were you discriminated  
19 against at the Post since your deposition in  
20 January of 2012?

21 A. As I stated, every day since my  
22 demotion from the Queens courthouse beat, I  
23 have been discriminated against. Every day  
24 that I was sent out on stories that my  
25 editors knew had no likelihood of making the

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1  
2 paper, in addition to the fact that the  
3 stories they did -- they sent me out on these  
4 dead-end stories while my counterparts, my  
5 white counterparts were given basically good  
6 stories that would make the paper.

7 So since my deposition last year,  
8 January, I have been discriminated against --  
9 oh, and not to mention the fact that I still  
10 haven't gotten, hadn't gotten a desk or a  
11 telephone.

12 Q. And so you have been discriminated  
13 against since January of 2012 because of your  
14 demotion in 2008?

15 MR. PEARSON: Objection.

16 A. I thought I answered that, but I  
17 have been discriminated against every day  
18 since my demotion from the Queens courthouse  
19 beat and every day that my editor, whoever  
20 that will be, sent me out on a story that had  
21 absolutely no chance of making the paper and  
22 then sent my white counterparts on stories  
23 that had an extreme likelihood of making the  
24 paper was another form of discrimination, or  
25 another example of discrimination.

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1  
2 Q. Can you identify a dead-end story  
3 that you were sent on since January of 2012?

4 A. Yes. The day I was sent out on --  
5 I was sent to an address for -- I don't  
6 recall the gentleman's first name, but his  
7 last name was Williams. He was a bus driver  
8 who was acquitted of the top charges in  
9 relation to a bus crash that killed several  
10 people coming back from a, I think it was an  
11 casino.

12 So I was sent to an address that  
13 was supposed to be his, at least that's what  
14 I was told. But in actuality, I knew it  
15 wasn't his address and I told my editor who  
16 sent me there that it wasn't the address  
17 because I had worked on the story when the  
18 bus crash happened and I had been sent to  
19 Mr. Williams address before and it was a  
20 different address.

21 And that was, I believe it was more  
22 than a year ago from his acquittal and there  
23 was no way that I was going to garner  
24 anything from sitting in front of an address  
25 where the person we were interested in

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1  
2 interviewing or getting words from or even  
3 getting words from neighbors from and the  
4 person didn't live there and hadn't lived  
5 there for, I don't know how many years.

6 Q. Did you ask your editor why he  
7 wanted you to go to that address?

8 A. I don't recall right now whether I  
9 specifically asked if -- that person why I  
10 was sent to that address. I do recall  
11 telling someone that that is not the correct  
12 address.

13 Q. Did you go to that address?

14 A. Yes, I did.

15 Q. Did you get any interviews at that  
16 address?

17 A. I did not get any interviews with  
18 anyone who knew Mr. Williams.

19 Q. You did not what?

20 A. I did not get any interviews with  
21 anyone who knew Mr. Williams.

22 Q. Did you get any interviews at all?

23 A. I spoke to people in the  
24 neighborhood in the building, but none of  
25 those people knew Mr. Williams.

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1 but he apologized.

2 Q. Did he explain why he said what he  
3 said?

4 A. Right now, I don't recall.

5 Q. Did you ask him for an apology or  
6 did he volunteer it to you?

7 A. I did not ask him for an apology.  
8 He volunteered the apology.

9 Q. Did you ever work with him again  
10 after that?

11 A. Yes.

12 Q. Did he use any offensive language  
13 after that occasion?

14 A. I think there was another occasion  
15 when he cursed, but this was in relation to  
16 the Post not paying him on time or something  
17 like that.

18 Q. Since your deposition in 2012, in  
19 the month of January, have you heard anybody  
20 else use a racial epithet in your presence?

21 A. At the Post?

22 Q. Let me reword that.

23 Since your deposition in January of  
24 2012, are you aware of anybody else using  
25

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1 racist or racially offensive language at the  
2 Post?

3 A. Right now, I don't recall.

4 Q. How about any sexist language?

5 A. I am sorry?

6 Q. How about any sexist language?

7 A. Right now, to my best recollection,  
8 I don't recall.

9 Q. And you haven't made any complaints  
10 to HR or the Post about discrimination or  
11 harassment or retaliation since January of  
12 2012, correct?

13 A. Well, I believe in my evaluation, I  
14 did state that I'm given these dead-end  
15 stories. But beyond that, I don't recall.

16 MR. LERNER: Let's take a break and  
17 we may be done.

18 MR. PEARSON: Sure.

19 THE VIDEOGRAPHER: The time is 3:17  
20 p.m. We are going off the record.  
21 (Recess)

22 THE VIDEOGRAPHER: The time is 2:25  
23 p.m. We are back on the record.

24 Q. Ms. Livingston, since January of  
25

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1 2012 to the present, other than the meeting  
2 you described with Jesse Angelo, have you had  
3 any other contact with Jesse Angelo?

4 A. Yes.

5 Q. When was that?

6 A. I think it was in January, there  
7 was a going away party for Michael Hechtman,  
8 who was a long-time editor at the Post, and  
9 during the festivities, there was an occasion  
10 where Jesse and I, I guess we were passing  
11 one another, and Jesse Angelo intentionally  
12 looked away so he didn't have to say anything  
13 to me, which kind of reminds me of another  
14 black employee that was fired by the Post who  
15 told me about -- it just reminded me of Neil  
16 Graves, another black employee who had been  
17 fired by the Post who told me about -- he was  
18 walking down the street one day and saw Jesse  
19 Angelo and Jesse intentionally looked away so  
20 he wouldn't have to say anything to him.

21 Q. Do you know if Jesse looked away  
22 from you at the party because you're black?

23 MR. PEARSON: Objection.

24 A. I couldn't really tell you what his  
25

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1 reasoning for looking away was. I just know  
2 what he looked away when he could have just  
3 as easily said hello.

4 Q. Do you know if he looked away from  
5 white people at the party as well?

6 MR. PEARSON: Objection.

7 A. I wasn't watching him at the party.  
8 I just know that when there was an occasion  
9 when he and I passed near one another, he  
10 looked away.

11 Q. And did you say anything to him or  
12 did he say anything to you at the party?

13 A. As I just said, he looked away, so  
14 no, he didn't say anything to me.

15 Q. And is that the only occasion since  
16 January of 2012 other than your termination  
17 meeting where you have had any contact with  
18 Jesse Angelo?

19 A. Right now, I don't recall any other  
20 contact. Right now, I don't recall that.

21 Q. What month and year was the  
22 Hechtman party?

23 A. I believe that was in January of  
24 this year.  
25

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Q. January 2013?

A. Yes.

Q. Other than what you have testified to here today, so far, is there any other change, are there any changes in how you were treated since your last -- since your January 2012 deposition at the New York Post? Let me rephrase that.

Since January of 2012, when you were first deposed in this case, have there been any changes at the New York Post in the way you have been treated other than any of the things you have testified to here today so far?

A. Right now, I don't recall -- nothing else comes to mind right now in regards to that question.

Q. Do you think you were treated worse after January of 2012 or was it simply consistent treatment both before and after January of 2012?

MR. PEARSON: Objection.

A. As I stated, there was a continuation from the demotion from the

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Queens courthouse beat and every day was just a, pretty much a dead-end assignment that had little or no chance of making the paper.

Q. OK. Since January of 2012, have you had any conversations or communications with any editor or New York Post executive about your lawsuit?

A. I am sorry, what was the question again?

Q. Since January of 2012, have you had any conversations with any editor or New York Post executive about your lawsuit?

A. Not that I recall, no.

Q. Was the -- was the white reporter on the Williams story that was sent to another location, did that reporter get an interview of Williams?

A. I'm pretty sure -- I'm pretty sure I mentioned to you that I didn't know what that reporter got.

Q. So you don't know if that reporter was sent to a location that didn't bear fruit either, right?

MR. PEARSON: Objection.

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A. From what I do know, I was sent to an address that was definitely not Mr. Williams and the white reporter, white male reporter was sent to an address that -- at least at one point in the recent future -- or recent past had been Mr. Williams' address.

Q. How do you know that the address you were sent to was definitely not the right address?

MR. PEARSON: Objection.

A. One thing the people I spoke to in the neighborhood, the photographer I worked with that day, he also knew it wasn't the correct address, and the fact that I had gone to the correct address and saw Mr. Williams at that previous address which is the address where the white reporter was sent the previous year.

Q. How do you know he was still at that other address a year later?

A. I don't know that he was at that -- that he still lived at the previous address. I just know that if there was a chance of

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getting anything worth putting in a story, it would have been at that other address, not the address that I was sent to.

Q. Do you know why your editor sent you to that address?

MR. PEARSON: Objection.

A. Like I said, since I was demoted from my Queens courthouse beat, I've consistently been sent on dead-end stories that had very little chance of making the paper. This was just another occasion where I was sent someplace where they pretty much had to know I wasn't going to get anything worth putting in a story.

Q. Did you ask the editor that day why are you sending me to this address?

A. Usually I can't even get a hold of an editor, so no, I didn't speak to an editor and specifically say why did you send me to this address.

MR. PEARSON: Are we taking a break?

MR. LERNER: Let's go off the record.

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specifically gave me assignments, but I would think yes, over that time span, I would have been given an assignment by her.

Q. And you were testifying about how you received story assignments, including one regarding the bus driver story, from someone who may or may not have been an editor. Do you know whether or not you were assigned that story by an editor at any point?

A. Yeah, right now, I don't know. I don't recall exactly who the rewrite person was, who the editor was on the story, but normally the rewrite people communicate to the editors who is going where.

Q. OK. So who is it that generally makes story assignment decisions such as the one that would have sent you to that particular address for the bus driver story?

MR. LERNER: Objection.

A. Normally the editors decide who goes where.

Q. How do you know that?

A. That just seems to be the customary way that things are done. Before -- normally

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editors are the ones who assign stories.

Q. What do you base that on?

A. Editors will call me and assign a story to me. Or sometimes a rewrite person will call and say, Eric Lenkowitz wants to send you here, who is an editor, he wants to send you there. So that's normally the way it goes.

MR. PEARSON: No further questions.

EXAMINATION BY

MR. LERNER:

Q. Which, Ms. Livingston, when you said editors are normally the ones who decide who goes where, do you know how many associate editors there are in the metro desk?

A. I don't even know what the exact titles are for the editors.

Q. Do you know how many editors there are on the metro desk?

A. Right now, I don't recall exactly how many editors are on the desk.

Q. Is it somewhere between five and ten?

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MR. PEARSON: Objection.

A. Like I said, like I said I don't really know.

Q. Is Eric Lenkowitz an editor?

A. I don't know his exact title, but I know that he is part of the editor -- editors desk.

Q. What are editors are you aware of on the metro desk?

A. There is Neal Sloane -- this is as of my firing as far as I know. There is Neil Sloane, Dan Greenfield, Michelle Gotthelf, of course, Mike Hechtman. He was an editor.

And then sometimes there are people like on the weekends who do editor's shifts, but right now, those are the ones that come to mind.

Q. And when you get your story assignments to those, are those normally communicated to you by a rewrite?

A. Well, no one gives me a story assignment now.

Q. When you received story assignments at the Post, were they normally communicated

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to you by a rewrite?

A. Sometimes rewrite, sometimes an editor.

Q. Rewrites are not editors, right?

A. It is my understanding that rewrite is a reporter who writes in the office.

Q. And sometimes you got an assignment from an editor, right?

A. I would get assignments from editors, yes.

Q. And could have been any of the editors that you have mentioned today, right?

A. That's correct.

Q. How many rewrites are working on a given day at the New York Post?

A. I couldn't tell you that. I don't know.

Q. Is it more than five?

A. I am not privy to the staff scheduling now, nor was I when I was actually an employee. I don't know.

Q. Other than Greenfield and Gotthelf, do you have knowledge that any of the other editors on the metro desk know about your